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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2006–0050]

Cold Treatment Regulations; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; technical amendment.

SUMMARY: In an interim rule published in the **Federal Register** on July 2, 2007, with an effective date of August 31, 2007, we amended the phytosanitary treatment regulations by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment. A final rule that was published in the **Federal Register** on July 18, 2007, and effective August 17, 2007, reorganized the cold treatment regulations by moving requirements regarding cold treatment that had previously been contained in the regulations governing the importation of fruits and vegetables to the section of the regulations containing the requirements for cold treatment enclosures and conducting cold treatment. This technical amendment indicates how the changes in the July 2 interim rule will appear in the regulations as they have been reorganized by the July 18 final rule.

DATES: This technical amendment is effective on August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager—Treatments, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within part 305, the cold treatments subpart (§§ 305.15 and 305.16, referred to below as the regulations) sets out requirements for performing cold treatment and cold treatment schedules for imported fruits and vegetables and for regulated articles moved interstate from quarantined areas within the United States.

Section 305.15 sets out the requirements for performing cold treatment. These requirements include standards that must be met by the facility performing cold treatment and the enclosure in which cold treatment is performed; monitoring requirements; procedural requirements for performing cold treatment; and a required compliance agreement or workplan to ensure that these requirements are followed, under appropriate oversight from the Animal and Plant Health Inspection Service (APHIS).

In an interim rule [1] titled ''Cold Treatment Regulations'' and published in the **Federal Register** on July 2, 2007, with an effective date of August 31, 2007 (72 FR 35909–35915, Docket No. APHIS–2006–0050), we amended § 305.15 by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment. The changes include: Adding more specific and stringent requirements for precooling fruit prior to cold treatment, requiring the use of temperature recording devices that are password-protected and tamperproof, adding requirements to increase the effectiveness of cold treatment conducted in vessel holds, and providing for officials authorized by APHIS to conduct audits of the cold treatment process.

In a separate final rule [2] titled ''Revision of Fruits and Vegetables Import Regulations'' and published in the **Federal Register** on July 18, 2007 and effective August 17, 2007, we revised and reorganized the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. As part of this final rule, we reorganized the cold treatment regulations in § 305.15 by moving requirements to § 305.15 that had previously been found in the regulations governing the importation of fruits and vegetables, specifically in § 319.56–2d. The final rule moved into § 305.15 all the provisions contained in § 319.56–2d that were not already present in § 305.15. The regulations were otherwise not amended. However, these changes necessitated a reorganization of the regulations in § 305.15.

Due to this reorganization, the amendatory language in the July 2 interim rule no longer refers to the provisions in the regulations that we intended to amend through that interim rule. This technical amendment sets out the regulations in § 305.15 as they will appear when the July 2 interim rule and this technical amendment become effective on August 31, 2007. This technical amendment does not change the provisions of the July 2 interim rule; it only establishes how the provisions of the July 2 interim rule will appear in § 305.15 as amended by the July 18 final rule.

We have provided a table showing where the provisions of the July 2 interim rule will appear in § 305.15 as that section was reorganized by the July 18 final rule for the convenience of the reader.

TABLE 1.—LOCATION OF PROVISIONS FROM JULY 2, 2007, INTERIM RULE IN THE REORGANIZED § 305.15

Subparagraph from July 2 interim rule:	Now appears in § 305.15 as:
(b)(1)	(c)(1).
(b)(2)	(c)(2).
(f)(1)	(d)(1).
(f)(2)	(d)(3).

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0050.*

[2] To view the final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2005-0106-0060.*

TABLE 1.—LOCATION OF PROVISIONS FROM JULY 2, 2007, INTERIM RULE IN THE REORGANIZED § 305.15—Continued

Subparagraph from July 2 interim rule:	Now appears in § 305.15 as:
(f)(3)	(d)(4).
(f)(4)	(d)(5).
(f)(5)	(d)(6).
(f)(6)	(d)(7) (see below).
(f)(7)	(d)(8).
(f)(8)	(d)(9).
(f)(9)	(d)(10) (see below).
(f)(10)	(d)(11).
(f)(11)	(d)(12) (see below).
(f)(12)	(d)(13).
(f)(13)	(d)(14).

Paragraph (d) of § 305.15 as amended by the July 18 final rule sets out requirements related to precooling fruit. The precooling requirements in the July 2 interim rule (which that rule would have added in paragraph (f)(3)) were intended to replace all previous precooling requirements. Accordingly, this technical amendment will remove paragraph (d) of § 305.15 from the regulations. Paragraphs (e), (f), (g), and (h) in § 305.15 will be redesignated as (d), (e), (f), and (g), respectively.

Paragraph (c)(4) of § 305.15 as amended by the July 18 final rule sets out requirements for temperature sensors. Paragraph (f)(6) in the July 2 interim rule contained requirements that complement those in (c)(4). To collect all the requirements relating to temperature sensors in one place, this technical amendment will add paragraph (f)(6) from the July 2 interim rule to § 305.15 as paragraph (d)(7), will incorporate into that paragraph (d)(7) the requirements from former (c)(4), and will remove paragraph (c)(4) of § 305.15.

In the July 2 interim rule, paragraph (f)(6) read:

> Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, sensor number, and temperature during all calibrations and during treatment. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

Paragraph (c)(4) indicates that the cold treatment enclosure must be equipped with recording devices, such that automatic, continuous temperature records are maintained and secured, and that recording devices must be capable of generating temperature charts for verification of treatment by an inspector. The new paragraph (d)(7) in § 305.15 will thus read:

> Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devices must be capable of generating temperature charts for verification by an inspector. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

Paragraph (f)(9) in the July 2 interim rule stated: ''The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature.'' This paragraph was intended to replace a more general provision requiring that the time to complete the treatment begins when the temperature inside the fruit reaches the required temperature. The July 18 final rule added to that provision a requirement that refrigeration continue until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment. This technical amendment will amend § 305.15 to retain both the requirement from the July 2 interim rule relating to the temperature probes and the refrigeration requirement established in the regulations by the July 18 final rule.

Paragraph (f)(11) of the July 2 interim rule referred to conditions under which shipments of treated commodities may be discharged. Paragraph (e)(10) contains a similar statement that refers to consignments, rather than shipments. The term ''consignments'' is the preferred term, as it is used in international standards. Accordingly, we will add (f)(11) to § 305.15 as (d)(12), but we will replace the word ''shipments'' with the word ''consignments.''

For the reasons given in the July 2 interim rule, this technical amendment will remove the requirements in the first sentence of paragraph (e)(9) and in paragraph (e)(11), as these paragraphs appear in the July 18 final rule.

Paragraphs (e)(13) and (e)(14) in the current form of § 305.15 will appear as paragraphs (d)(15) and (d)(16), respectively. However, the requirements in paragraph (e)(17) of § 305.15 will appear in a new paragraph (h) at the end of the section. Paragraph (e)(17) sets out additional requirements for treatments performed after arrival in the United States at specific ports; we believe it will assist the reader to set out all the general conditions applying to cold treatment before listing port-specific conditions.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for 7 CFR part 305 continues to read as follows:

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

■ 2. Section 305.15 is amended as follows:

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

■ b. By removing paragraph (d).

■ c. By redesignating paragraphs (e), (f), (g), and (h) as paragraphs (d), (e), (f), and (g), respectively.

■ d. By revising newly redesignated paragraph (d) to read as set forth below.

■ e. By adding a new paragraph (h) to read as set forth below.

§ 305.15 Treatment requirements.

* * * * *

(c) *Cold treatment enclosures.* All enclosures in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of maintaining the treatment temperature before the treatment begins and holding fruit at or below the treatment temperature during the treatment.

(2) Maintain fruit pulp temperatures according to treatment schedules with no more than a 0.39 °C (0.7 °F) variation in temperature.

(3) Be structurally sound and adequate to maintain required temperatures.

(d) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on vessels must be provided by the vessel or vessel agent. An official authorized by APHIS monitors, manages, and advises in order to ensure that the treatment procedures are followed.

(2) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-

contamination or mixing with other infested fruit.

(4) Fruit intended for in-transit cold treatment must be precooled to the temperature at which the fruit will be treated prior to beginning treatment. The in-transit treatment enclosure may not be used for precooling unless an official authorized by APHIS approves the loading of the fruit in the treatment enclosure as adequate to allow for fruit pulp temperatures to be taken prior to beginning treatment. If the fruit is precooled outside the treatment enclosure, an official authorized by APHIS will take pulp temperatures manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28 C (0.5 F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected and returned for additional precooling until the fruit reaches the treatment temperature. If fruit is precooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be precooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

(5) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before the enclosure is used. An official authorized by APHIS must approve loading of compartment, number and placement of temperature probes or sensors, and initial fruit temperature readings before beginning the treatment. Hanging decks and hatch coamings within vessels may not be used as enclosures for in-transit cold treatment without prior written approval from APHIS. Double-stacking of pallets is not allowed.

(6) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated. A numbered seal must be placed on the doors of the loaded container and may be removed only at the port of destination by an official authorized by APHIS.

(7) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devises must be capable of generating temperature charts for verification by an inspector. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

(8) A minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures. A minimum of three temperature probes or sensors is required for other treatment enclosures. An official authorized by APHIS will have the option to require that additional temperature probes or sensors be used, depending on the size of the treatment enclosure.

(9) Fruit pulp temperatures must be maintained at the temperature specified in the treatment schedule with no more than a 0.39 C (0.7 °F) variation in temperature between two consecutive hourly readings. Failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(10) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(11) Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour will invalidate the treatment or indicate treatment failure unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(12) Cold treatment is not completed until so declared by an official authorized by APHIS or the certifying official of the foreign country; consignments of treated commodities may not be discharged until APHIS clearance has been fully completed, including review and approval of treatment record charts.

(13) Cold treatment of fruits in break bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break bulk vessels or containers.

(14) An official authorized by APHIS may perform audits to ensure that the treatment procedures comply with the regulations in this subpart. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits.

(15) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(16) *Caution and disclaimer.* The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

* * * * *

(h) *Additional requirements for treatments performed after arrival in the United States.*

(1) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of

the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(2) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(v) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(3) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(iv) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(v) The cold treatment facility must remain locked during non-working hours.

(vi) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vii) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(4) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(ii) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(iii) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iv) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(v) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(vi) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(A) All containers must be unloaded within the cold treatment facility; and

(B) Untreated fruit may not be exposed to the outdoors under any circumstances.

(vii) The cold treatment facility must remain locked during non-working hours.

(viii) Blacklights or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(ix) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(x) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(xi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

Done in Washington, DC, this 27th day of August 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–17295 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23072; Directorate Identifier 2005–NE–38–AD; Amendment 39–15186; AD 2007–18–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–7R4 turbofan engines. That AD currently requires inspection of the blade root thickness of 1st stage fan blades identified by part number (P/N) and serial number (SN) in the AD. This AD requires the same actions but corrects 12 P/Ns, adds 10 part SNs, and adds the definition of next fan blade exposure to the compliance section. This AD results from the discovery of inaccurate part quantity, part numbers, and serial numbers used in AD 2005–26–09. We are issuing this AD to prevent 1st stage fan blade fracture and uncontained engine failure, resulting in possible damage to the airplane.

DATES: This AD becomes effective October 5, 2007.

ADDRESSES: The Docket Operations office is located at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2005–26–09, Amendment 39–14430 (70 FR 76381, December 27, 2005), with a proposed AD. The proposed AD applies to (PW) JT9D–7R4 turbofan engines. We published the proposed AD in the **Federal Register** on March 1, 2007 (72 FR 9276). That action proposed to require inspection of the blade root thickness of 1st stage fan blades identified by P/N and SN.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Duplicate Serial Number

One commenter asks us to remove a duplicate serial number from Table 1. The commenter states that we listed two fan blades, P/N 831021, serial number NS8559 in Table 1. We agree. We deleted one of the duplicate SNs.

Corrections to the NPRM

We found one typographical error in a blade SN. We changed ND6924 to ND8924. Blade SN ND6924 is not included in the population of suspect blades. We also found the population is not 531, it is 538. We corrected these errors in the NPRM.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will cause only a minimal increase to the economic burden on any operator and will not increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 538 1st stage fan blades installed on JT9D–7R4 turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 0.5 work-hour per 1st stage fan blade to perform the proposed actions, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $21,520.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14430 70 FR 76381, December 27, 2005, and by adding a new airworthiness directive, Amendment 39–15196, to read as follows:

2007–18–06 Pratt & Whitney: Amendment 39–15196. Docket No. FAA–2005–23072; Directorate Identifier 2005–NE–38–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2005–26–09.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–7R4 turbofan engines. These engines are installed on, but not limited to, Airbus A300 and A310, and Boeing 747 and 767 airplanes.

Unsafe Condition

(d) This AD results from the discovery of inaccurate part quantity, part numbers (P/Ns), and serial numbers (SNs) used in AD 2005–26–09. We are issuing this AD to prevent 1st stage fan blade fracture and uncontained engine failure, resulting in possible damage to the airplane.

Compliance

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

(f) For 1st stage fan blades that are listed by P/N and SN in Table 1 of this AD, do the following:

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES

P/Ns	SNs
5001341–022	JW2804
5001341–022	JW0354
5001341–022	ND5746
5001341–022	ND5770
5001341–022	JW3992
5001341–022	ND8615
5001341–022	JW0442
5001341–022	JW2317
5001341–022	ND8631
5001341–022	ND8635
5001341–022	JW4624
5001341–022	NE0394
5001341–022	NE0153
5001341–022	NN8054
5001341–022	JW4693
5001341–022	ND7304
5001341–022	MG6108
5001341–022	MG5862
5001341–022	MG5619
5001341–022	NE0308
5001341–022	NE0200
5001341–022	MG6797
5001341–022	JW0230
5001341–022	ND5652
5001341–022	ND5775
5001341–022	JW0251
5001341–022	ND5719
5001341–022	JW0248
5001341–022	ND5785
5001341–022	ND5676
5001341–022	ND5661
5001341–022	JW0265
5001341–022	ND5699
5001341–022	ND5767
5001341–022	JW0259
5001341–022	ND5680
5001341–022	ND5749
5001341–022	JW0235
5001341–022	ND5776
5001341–022	ND8580
5001341–022	MG6039
5001341–022	ND9127
5001341–022	JW4287
5001341–022	JW0262
5001341–022	JW0445
5001341–022	JW4665
5001341–022	MG5901
5001341–022	NE0303
5001341–022	ND8703
5001341–022	JW4574
5001341–022	JW4286
5001341–022	JW4491
5001341–022	JW4630
5001341–022	JW4391
5001341–022	MG6550
5001341–022	MG6776
5001341–022	JW4586
5001341–022	JW0352
5001341–022	JW4261
5001341–022	MG6135
5001341–022	JW4685
5001341–022	MG6772
5001341–022	MG6793
5001341–022	MG7111
5001341–022	ND8618
5001341–022	JW0644
5001341–022	JW4631
5001341–022	JW4651
5001341–022	JW0234
5001341–022	JW4646
804121	NN9016
804121	VJ3393
804121	PX3694
804121	RK9168
804121	PX5023
804121	VJ3324
804121	VJ3504
804121	NN9115
804121	NN8936
804121	PX3816
804121	VJ3412
804121	RK9163
804121	VJ3447
804121	RK9230
804121	RK9109
804121	PX4627
804121	RK8990
804121	SP9459
804121	RK8656
804121	NN8933
804121	VJ3444
804121	ND5864
804121	NN9020
804121	RK8905
804121	SR1733
804121	NN9047
804121	PX3692
804121	PX3786
804121	NN9025
804121	NN9007
804121	RK9100
804121	VJ3399
804121	PX4970
804121	PX5013
804121	RK8904
804121	NN8986
804121	NN8829
804121	VJ3459
804121	RK9143
804121	VJ3414
804121	NN9028
804121	SP1557
804121	PX5003
804121	PX5042
804121	VJ3475
804121	ND7330
804121	PX3714
831021–003	NS8913
831021–003	ND6512
831021–003	ND6941
831021–003	ND9576
831021–003	NS7555
831021–003	NS8286
831021–003	NS7447
831021–003	ND6488
831021–003	ND8296
831021–003	ND6956
831021–003	ND7879
831021–003	ND6509
831021–003	ND9814
831021–003	NN7331
831021–003	ND6991
831021–003	ND6894
831021–003	NS6413
831021–003	ND7344
831021–003	ND6947
831021–003	NN8732
831021–003	ND8536
831021–003	ND6946
831021–003	ND6723
831021–003	ND9294
831021–003	ND9290
831021–003	ND6013
831021–003	ND8937
831021–003	NS7160
831021–003	NS6435
831021–003	NS6591
831021–003	ND9558
831021–003	NS8479
831021–003	NS9382
831021–003	ND8965
831021–003	ND9837
831021–003	ND5959
831021–003	NS6491
831021–003	NS9072
831021–003	ND9625
831021–003	ND6714
831021–003	ND6820
831021–003	ND8972
831021–003	NE0286
831021–003	NE0347
831021–003	ND8010
831021–003	ND8956
831021–003	ND9535
831021–003	ND9831
831021–003	NE0227
831021–003	ND8283
831021–003	ND9730
831021–003	NN7656
831021–003	NS7775
831021–003	ND9815
831021–003	ND6135
831021–003	NS8491
831021–003	NS6395
831021–003	NS8584
831021–003	NN7272
831021–003	MG7159
831021–003	NS6592
831021–003	ND7862
831021–003	ND6684
831021–003	NN7744
831021–003	ND7480
831021–003	ND7873
831021–003	ND6827
831021–003	ND6576
831021–003	ND9261
831021–003	NS8686
831021–003	ND9052
831021–003	ND6897
831021–003	ND6565
831021–003	NN8966
831021–003	PX3707
831021–003	NS7031
831021–003	ND6584
831021–003	ND9883

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES—Continued

P/Ns	SNs
831021–003	NS6535
831021–003	ND7852
831021–003	ND9662
831021–003	ND7871
831021–003	JW0106
831021–003	ND8305
831021–003	NS6409
831021–003	NE0442
831021–003	ND9095
831021–003	ND9302
831021–003	ND9023
831021–003	ND8009
831021–003	ND8477
831021–003	ND7492
831021–003	ND8776
831021–003	ND6524
831021–003	ND6704
831021–003	ND8911
831021–003	ND8789
831021–003	ND8798
831021–003	ND6407
831021–003	ND7668
831021–003	ND9179
831021–003	NE0421
831021–003	ND6513
831021–003	ND6744
831021–003	ND7654
831021–003	ND7870
831021–003	ND9759
831021–003	ND6561
831021–003	ND5826
831021–003	ND6031
831021–003	ND8714
831021–003	ND8872
831021–003	ND6678
831021–003	ND6629
831021–003	ND8995
831021–003	NE0302
831021–003	ND6405
831021–003	NS8300
831021–003	NS8769
831021–003	NS7147
831021–003	ND6649
831021–003	ND7766
831021–003	NS7864
831021–003	NS8734
831021–003	ND6677
831021–003	NS7911
831021–003	ND8205
831021–003	ND8804
831021–003	ND6639
831021–003	ND8994
831021–003	ND7275
831021–003	ND9195
831021–003	ND6178
831021–003	ND8639
831021–003	ND9760
831021–003	ND9108X
831021–003	ND6427
831021–003	ND6590
831021–003	NS6551
831021–003	JW1158
831021–003	ND6412
831021–003	ND7922
831021–003	NS8678
831021–003	ND8930
831021–003	ND6596
831021–003	ND9570
831021–003	NN9027
831021–003	ND6446
831021–003	NE0275

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES—Continued

P/Ns	SNs
831021–003	ND9917
831021–003	NS7919
831021–003	NS7907
831021–003	ND6583
831021–003	NN7420
831021–003	ND7746
831021–003	ND8187
831021–003	NN8999
831021–003	ND6043
831021–003	ND7880
831021–003	NN7175
831021–003	ND9816
831021–003	ND8174
831021–003	ND6045
831021–003	NS7562
831021–003	JW0075
831021–003	ND6848
831021–003	ND8531
831021–003	ND6311
831021–003	ND8144
831021–003	ND5798
831021–003	ND8113
831021–003	ND9642
831021–003	ND7436
831021–003	ND9054
831021–003	ND9683
831021–003	ND5991
831021–003	ND6026
831021–003	ND6616
831021–003	ND6530
831021–003	NE0374
831021–003	ND6364
831021–003	ND7718
831021–003	ND6473
831021–003	ND6436
831021–003	ND6887
831021–003	ND6518
831021–003	ND6479
831021–003	NS6330
831021–003	ND7264
831021–003	ND8151
831021–003	ND6562
831021–003	NS8776
831021–003	ND6519
831021–003	ND7659
831021–003	NS9049
831021–003	NS6861
831021–003	ND9571
831021–003	ND9346
831021–003	ND6501
831021–003	NS8505
831021–003	ND9338
831021–003	ND9775
831021–003	ND6485
831021–003	ND7165
831021–003	ND9371
831021–003	ND9537
831021–003	NS7889
831021–003	ND7877
831021–003	ND8670
831021–003	ND9032
831021–003	ND8781
831021–003	ND8604
831021–003	ND9329
831021–003	ND9110
831021–003	ND5997
831021–003	ND6027
831021–003	ND9589
831021–003	ND6575
831021–003	ND6592
831021–003	ND6463

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES—Continued

P/Ns	SNs
831021–003	NS8583
831021–003	NS8590
831021–003	NS8567
831021–003	NS6795
831021–003	NS7110
831021–003	NS6587
831021–003	NS6404
831021–003	ND6486
5001341–022	JW0942
5001341–022	ND9231
5001341–022	JW4812
5001341–022	ND6555
5001341–022	M1375
5001341–022	MG6627
5001341–022	MG6794
5001341–022	ND9399
5001341–022	NE0084
5001341–022	MG6252
5001341–022	ND7422
5001341–022	ND7043
5001341–022	MG5722
5001341–022	MG5918
5001341–022	ND6984
5001341–022	M0839
5001341–022	M0922
5001341–022	M0938
5001341–022	M1117
5001341–022	M0307
5001341–022	JW3871
5001341–022	M1125
5001341–022	M1149
5001341–022	JW2681
5001341–022	M0270
5001341–022	M1120
5001341–022	M0205
5001341–022	AE9352
5001341–022	JW3492
5001341–022	ND6148
5001341–022	ND8907
5001341–022	M1235
5001341–022	MG5585
5001341–022	ND8436
5001341–022	MG5696
5001341–022	ND8704
5001341–022	JW2284
5001341–022	JW2313
5001341–022	JW2498
5001341–022	JW2541
5001341–022	JW2560
5001341–022	JW2589
5001341–022	JW2639
5001341–022	JW2760
5001341–022	JW2792
5001341–022	M0579
5001341–022	MG2825
5001341–022	MG5477
5001341–022	ND5917
5001341–022	JW1976
5001341–022	JW2653
5001341–022	JW2608
5001341–022	JW2727
5001341–022	JW2764
5001341–022	JW2265
5001341–022	JW2474
5001341–022	JW2396
5001341–022	JW3554
5001341–022	JW2667
5001341–022	MG2302
5001341–022	MG3972
5001341–022	JW3930
5001341–022	ND6749

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES—Continued

P/Ns	SNs
5001341–022	M1172
5001341–022	JW2104
5001341–022	JW2519
5001341–022	JW2640
5001341–022	JW2517
5001341–022	JW2663
5001341–022	JW2823
5001341–022	M0536
5001341–022	JW2725
5001341–022	MG5917
5001341–022	JW0681
5001341–022	JW0711
5001341–022	JW0740
5001341–022	JW0807
5001341–022	JW1089
5001341–022	JW1362
5001341–022	JW2065
5001341–022	MG2434
5001341–022	MG2846
5001341–022	JW0806
804121	NN9854
804121	NN9024
804121	NN9032
804121	PX5029
804121	NN9050
804121	NS8242
804121	NS8260
804121	PX4273
804121	PX4378
804121	RL0857
804121	RX8763
804121	NS8331
804121	NN9824
804121	MG6979
804121	MG7023
804121	MG7055
804121	RK8914
804121	RL0023
804121	PX4328
804121	RK9008
804121	TG1506
804121	KK8226
804121	MG2604
804121	NS6691
804121	RK8968
804121	NN9917
804121	RK7824
804121	M1343
804121	NS6559
804121	NS7767
804121	NE0363
804121	PX3771
804121	NN9972
804121	RL0460
804121	RK8310
804121	SR2115
804121	TG2826
804121	PX5018
804121	PX5002
831021–003	ND7627
831021–003	ND6890
831021–003	ND7461
831021–003	ND9616
831021–003	NE0413
831021–003	NS8825
831021–003	NS6350
831021–003	NS7168
831021–003	NS7705
831021–003	NS7848
831021–003	ND9128
831021–003	ND9541

TABLE 1.—AFFECTED 1ST STAGE FAN BLADES—Continued

P/Ns	SNs
831021–003	ND9671
831021–003	ND9684
831021–003	NE0277
831021–003	NE0384
831021–003	NE0396
831021–003	ND6421
831021–003	ND6599
831021–003	ND6614
831021–003	ND7847
831021–003	ND8346
831021–003	ND8853
831021–003	ND8915
831021–003	NS8719
831021–003	NS8838
831021–003	NT0169
831021–003	NS9584
831021–003	ND6445
831021–003	ND6834
831021–003	ND7467
831021–003	ND8887
831021–003	ND6520
831021–003	NS8611
831021–003	NS7640
831021–003	NN7037
831021–003	NN7590
831021–003	NN8120
831021–003	NN8573
831021–003	NN9719
831021–003	NS8784
831021–003	TB6B367
831021–003	NN9557
831021–003	NN9710
831021–003	NS8374
831021–003	NS8770
831021–003	NS9022
831021–003	NS8416
831021–003	NS6474
831021–003	ND8912
831021–003	NT0108
831021–003	NS8836
831021–003	NN8310
831021–003	NS8559
5001341–022	JW2313
5001341–022	JW2498
5001341–022	JW2541
5001341–022	JW2560
5001341–022	JW2589
5001341–022	JW2639
5001341–022	JW2760
5001341–022	JW2792
5001341–022	JW4713
5001341–022	MG6743
5001341–022	ND8924
831021–003	ND9177
831021–003	ND9496
831021–003	NS7894
831021–003	NS9072
804121	PX3805
804121	PX4266

For Engines Installed on an Airplane

(1) For engines installed on an airplane with affected 1st stage fan blades installed, perform the actions in paragraphs (f)(3) through (f)(6)(ii) of this AD at the next 1st stage fan blade exposure.

For Engines Not Installed on an Airplane, or, for Affected 1st Stage Fan Blades Not Installed in an Engine

(2) For engines not installed on an airplane with affected 1st stage fan blades installed, or, for affected 1st stage fan blades not installed in an engine, paragraph (h) of this AD applies.

1st Stage Fan Blade Check

(3) Check the 1st stage fan blade for a circled, letter I, on the approved marking area of the outboard side of the blade platform. If the blade has this marking, no further action is required.

(4) Remove 1st stage fan blades without a circled, letter I, on the approved marking area of the outboard side of the blade platform, if installed.

(5) Inspect the 1st stage fan blade root thickness. You can find information on inspecting the blade root thickness in PW Engine Manual Section 72–31–02, Inspect–01, and Repair–23.

(6) For 1st stage fan blades that pass the inspection referenced in paragraph (f)(5) of this AD:

(i) Vibropeen the letter I and a circle around that letter, on the approved marking area of the outboard side of the blade platform. You can find information on approved blade marking in the JT9D–7R4 Engine Manual, Section 72–31–02, Typical Repair–13, Mark Repair Codes.

(ii) Return the 1st stage fan blades to service.

Definition

(g) For the purposes of paragraph (f)(1) of this AD, next 1st stage fan blade exposure is:

(1) When any 1st stage fan blade is removed from the engine; or

(2) When the 1st stage fan hub is removed from the engine.

Prohibited Installation

(h) After the effective date of this AD, do not install any 1st stage fan blades listed in Table 1 of this AD on any airplane, unless the actions of this AD have been done to the 1st stage fan blades.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on August 24, 2007.

Mark A. Rumizen,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–17210 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 437

[Docket No. FAA–2006–24197; Amendment Nos. 401–5, 404–4, 405–3, 406–4, 413–9, 420–3, 431–2, 437–0]

Experimental Permits for Reusable Suborbital Rockets

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Office of Management and Budget Approval for Information Collection.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) approval of the information collection requirement in the final rule published April 6, 2007 (72 FR 17001). The sections of the final rule pending approval of this information collection request are effective on publication of this notice.

DATES: The FAA received OMB approval for the information collection requirement in the Final Rule published on April 6, 2007. The compliance date for information collection requirements in 14 CFR 437.21, 437.25, 437.27, 437.29, 437.31, 437.37, 437.41, 437.53, 437.55, 437.57, 437.59, 437.69, and 437.89 is Augusst 31, 2007.

FOR FURTHER INFORMATION CONTACT: Randy Repcheck, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8760; facsimile: (202) 267–5463; e-mail: *randy.repcheck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2007, the FAA published the final rule, ''Experimental Permits for Reusable Suborbital Rockets,'' in the **Federal Register**. The rule established application requirements for an operator of a manned or unmanned reusable suborbital rocket to obtain an experimental permit. The FAA also established operating requirements and restrictions on launch and re-entry of reusable suborbital rockets operated under a permit. The requirements above are in Title 14 of the Code of Federal Regulations parts 401, 404, 405, 406, 413, 415, 420, 431, and 437.

We noted, in the ''Paperwork Reduction Act'' section of the final rule, that affected parties did not need to comply with the information collection requirements of the rule until the Office of Management and Budget (OMB) approved the FAA's request to collect the information.

In accordance with the Paperwork Reduction Act, OMB approved the FAA's request for new information collection on June 1, 2007, and assigned the information collection OMB Control Number 2120–0722. The control number was not available when the final rule was published, thus necessitating publication of this notice. The FAA request was approved by OMB without change and expires on June 30, 2010.

49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105, grants authority to the Administrator to publish this notice. The final rule (72 FR 17001) became effective on June 5, 2007, and the compliance date for information collection requirements in 14 CFR 437.21, 437.25, 437.27, 437.29, 437.31, 437.37, 437.41, 437.53, 437.55, 437.57, 437.59, 437.69, and 437.89 is August 31, 2007.

Issued in Washington, DC on August 24, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–17368 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 21

Special Calls

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has adopted amendments to Part 21 of its regulations relating to special calls for information. The amendments will: Add to the types of information specified in § 21.02, which must be furnished upon special call, information regarding exchanges of futures for physical commodities or for derivatives positions, and information regarding delivery notices issued and stopped; and delegate to the Director of the Division of Market Oversight and the Director's delegatees, the ability to issue special calls pursuant to sections 21.01 and 21.02.

EFFECTIVE DATE: August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Don Heitman, Senior Special Counsel (telephone 202–418–5041, e-mail *dheitman@cftc.gov*), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Exchange Act (''Act''), as amended by the Commodity Futures Modernization Act of 2000 (''CFMA''), Pub. L. No. 106–554, is intended, among other things, to ''deter and prevent price manipulation or any other disruptions to market integrity.'' [1] To that end, the Commission, through its Division of Market Oversight (''Division''), conducts a comprehensive program of market surveillance. A centerpiece of this program is the large-trader reporting system, under which all large futures and option positions are reported to the Commission. Each day, for every active futures or option market, Division surveillance staff monitors the activities of large traders, key price relationships, and all relevant supply and demand factors in a continuous review for potential market problems. An essential element of the Commission's market surveillance program is the ability to make special calls for information from Commission registrants and other market participants.

A. Information To Be Furnished Upon Special Call

Part 17 of the Commission's regulations sets forth the routine reports that futures commission merchants, members of contract markets and foreign brokers (collectively, ''reporting firms'') are required to submit to the Commission.[2] These reports provide the information for the Commission's large trader reporting system. The Commission uses that information in its market surveillance program to detect and prevent market manipulation or other disruptions to market integrity in markets subject to Commission oversight.

By contrast, the purpose of the Commission's special call authority in Part 21 of the Commission's regulations is to provide the Commission with relevant information that is not routinely supplied to the Commission pursuant to other parts of the

[1] Commodity Exchange Act § 3(b), 7 U.S.C. § 5(b).

[2] The Commission has recently proposed amendments to its definition of the term, ''foreign broker.'' The amended definition would also be relocated, from its current location at § 15.00(g) to § 1.3(xx). *See* 72 FR 15637 (April 2, 2007). If such amendments were to be adopted, there would be no change in a foreign broker's obligations to comply with the Commission's large trader or special call regulations set forth in 17 CFR Parts 15-21.

Commission's regulations such as Part 17. For example, the Commission may need to know about futures positions that are below the routine reporting levels specified in Part 15 of the Commission's regulations. Among possible reasons for such special needs for information may be a particular market situation that warrants unusually close Commission market surveillance, or when Commission staff is conducting an audit of reporting firms to ensure complete and accurate reporting.

The amendments to Part 21 require reporting firms to retain and make available to the Commission, upon a special call, information similar to that which they are required to report to the Commission pursuant to Part 17 of the Commission's regulations. Specifically, the amendments add two additional categories of information to the types of information specified in § 21.02, which must be furnished upon special call. The first additional category of information subject to special call under the amended rules includes information regarding futures contracts exchanged for physical commodities (''EFPs''), as well as futures contracts exchanged for other derivatives contracts, including exchanges of futures for options (''EFOs'') and exchanges of futures for swaps (''EFSs''). The second additional category of information includes the amount of futures contracts where actual delivery of the underlying commodity has been initiated (i.e., delivery notices have been issued or received).

Section 21.02 applies to futures commission merchants (''FCMs''), introducing brokers (''IBs''), members of contract markets and foreign brokers. However, the first three of the foregoing categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations, which, among other things, requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these rules. Therefore, as a practical matter, the amended rules impose new requirements only on foreign brokers (who are not subject to § 1.35).

Foreign brokers and other persons receiving a special call pursuant to § 21.02 are required by that regulation to furnish the information requested. Since such persons cannot comply with the legal requirement to furnish information pursuant to a special call without maintaining records from which to generate the information requested, it follows that persons subject to special calls under § 21.02 are required, by the Commission's regulations, to maintain such records. Therefore, such records—including both those previously listed in § 21.02, and those that are added by this rule amendment—are subject to the five-year record retention requirements of § 1.31(a)(1) of the regulations, which provides in relevant part that:

All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five-year period.

B. Delegation of Authority

The amendments adopted herein also delegate to the Director of the Division of Market Oversight, and the Director's delegatees, the power to issue special calls pursuant to sections 21.01 and 21.02. Consistent with other delegations of authority to Commission senior staff, the delegation of the Part 21 special call authority allows the Director to submit to the Commission for its consideration any matter that has been delegated pursuant to the new section. The amendment also preserves the Commission's ultimate authority over the special calls by providing that, ''nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated * * * to the Director.''

C. The Proposed Rules

These amendments were published for comment at 72 FR 34417, June 22, 2007, with a 30-day comment period. No comments were received in response to the notice of proposed rulemaking. Accordingly, the amendments have been adopted as proposed.

II. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, § 15(a) simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amendments supplement the Commission's rules regarding its market surveillance program. That program supports one of the Commission's most critical statutory responsibilities, deterring and preventing price manipulation or any other disruptions to market integrity. Effective surveillance activities are crucial not only to protecting market participants and the public from price manipulation, but also to: Promoting market efficiency, competitiveness and financial integrity; protecting the futures markets' price discovery function; and promoting sound risk management practices.

In addition, the records that are subject to special call under these amendments are the type of basic transaction records that any foreign broker would create as a matter of sound business practices. Because these records would be created in any event, independently of any regulatory requirements, the rules impose no additional costs on foreign brokers in that area. There would be minimal costs associated with providing the records in answer to a special call, but such costs would be far outweighed by the benefits of protecting the markets and the public. Finally, with respect to the five-year record retention requirement that applies to these records, the cost of retaining the records will be minimal because Commission rules allow such records to be maintained electronically. Those minimal costs would, again, be far outweighed by the benefits of protecting the marketplace and the public.

The Commission has considered the costs and benefits of the amendments to Part 21 regarding special calls in light of the above-noted specific areas of concern identified in section 15. The Commission believes that the amended rules impose the minimum requirements necessary to enable it to perform its oversight functions and to carry out its mandate to protect the public interest in markets that are free of fraud, abuse and manipulation.

After considering these factors, the Commission has determined to adopt the rule amendments set forth below.

In the notice of proposed rulemaking, the Commission specifically invited

public comment on its application of the criteria contained in the Act. Commenters were also invited to submit any quantifiable data that they might have concerning the costs and benefits of the proposed rules with their comment letter. As noted above, no comments were received.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The amendment to § 21.02 applies to FCMs, IBs, members of contract markets and foreign brokers. However, as noted above, the first three of these categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations. Among other things, that section requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these rules. Therefore, as a practical matter, the rules impose new requirements only on foreign brokers (who are not subject to § 1.35).

With respect to such foreign brokers, the Commission recently published proposed rules to exempt from registration certain foreign persons (including foreign brokers).[3] In reviewing the applicability of the RFA to such foreign persons, the Commission noted that it has previously established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on such entities in accordance with the RFA.[4] The Commission has previously determined that FCMs are not small entities for purposes of the RFA because each FCM has an underlying fiduciary relationship with its customers, regardless of the size of the FCM.[5] The Commission notes that the foreign brokers affected by these amendments to the Commission's regulations would be required to be registered as FCMs if not for certain exemptions provided in Commission regulations. As such, they would maintain a fiduciary relationship with customers similar to the relationship maintained by each registered FCM. Therefore, in this context foreign brokers, like FCMs, are not appropriately categorized as small entities. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

These rules contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (''PRA''),[6] the Commission submitted a copy of the rules to the Office of Management and Budget (''OMB'') for its review.

The amended rules have been reviewed and approved by OMB pursuant to the PRA, under control number 3038–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. In the Notice of Proposed Rulemaking, the Commission estimated the paperwork burden that could be imposed by the amendments and solicited comments thereon.[7] No comments were received.

Copies of the information collection submission to OMB are available from the Commission Clearance Officer, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects

Commodity futures, Commodity Futures Trading Commission.

■ In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, the Commission hereby amends Part 21 of Title 17 of the Code of Federal Regulations as follows:

PART 21—SPECIAL CALLS

■ 1. The authority section for Part 21 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

■ 2. Section 21.02 is amended by removing the word, ''and,'' at the end of paragraph (f), by redesignating paragraph (g) as paragraph (i), and by adding new paragraphs (g) and (h).

The additions read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

* * * * *

(g) The total number of futures contracts exchanged for commodities or for derivatives positions;

(h) The total number of futures contracts against which delivery notices have been issued or received; and

* * * * *

■ 3. Section 21.04 is added to read as follows:

§ 21.04 Delegation of authority to the Director of the Division of Market Oversight.

The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Market Oversight, or to the Director's delegates, the authority set forth in section 21.01 of this Part to make special calls for information on controlled accounts from futures commission merchants and from introducing brokers and the authority set forth in section 21.02 of this Part to make special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers. The Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Director.

Issued in Washington, DC, on August 23, 2007, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E7–17100 Filed 8–30–07; 8:45 am]

BILLING CODE 6351–01–P

[3] 72 FR 15673 (April 2, 2007).

[4] 47 FR 18618, at 18621 (April 30, 1982).

[5] *Id.* at 18619.

[6] Pub. L. 104–13 (May 13, 1995).

[7] 72 FR 34417 (June 22, 2007).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 54

[TD 9334]

RIN 1545–BG95

Requirement of Return and Time for Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction notice.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9334) that were published in the **Federal Register** on Friday, July 6, 2007 (72 FR 36871) providing guidance relating to the requirement of a return to accompany payment of excise taxes under section 4965 of the Internal Revenue Code and the time for filing that return.

DATES: The correction is effective August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–6070, Michael Blumenfeld, (202) 622–1124, or Dana Barry, (202) 622–6060 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of the correction are under Section 4965 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9334) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9334), which were the subject of FR Doc. E7–12901, is corrected as follows:

On page 36781, in the document heading, the language ''RIN 1545–BG20'' is corrected to read ''RIN 1545–BG95''.

LaNita Van Dyke,

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

[FR Doc. E7–17227 Filed 8–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–046]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Cambridge Offshore Challenge,'' a marine event to be held on the waters of the Choptank River at Cambridge, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Choptank River during the event.

DATES: This rule is effective from 10:30 a.m. on September 22, 2007 through 5:30 p.m. on September 23, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–07–046 and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, Room 416 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Marine Event Coordinator, Coast Guard Sector Baltimore, at (410) 576–2674 or e-mail at *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 16, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Choptank River, Cambridge, MD in the **Federal Register** (72 FR 38804). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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 the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support vessels, spectator craft and other vessels transiting the event area. However, advance notifications will be made to users of Choptank River via marine information broadcasts, local notice to mariners, commercial radio stations, and area newspapers.

Background and Purpose

On September 22 and 23, 2007, the Chesapeake Bay Powerboat Association will sponsor the ''2007 Cambridge Offshore Challenge,'' on the waters of the Choptank River at Cambridge, Maryland. The event will consist of approximately 60 offshore powerboats conducting high-speed competitive races between the Route 50 Bridge and Oystershell Point, MD. A fleet of approximately 250 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Choptank River, near Cambridge, Maryland.

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 is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Choptank River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it

is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we 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 would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Fifth Coast Guard District at the address listed under **ADDRESSES**. 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.

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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which 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)(h), of the Instruction, from further environmental documentation. We have made a determination that this action is not likely to have a significant effect on the human environment. The proposed marine event consisting of power boats conducting high speed races along a marked race course within the Choptank River does not introduce any significant environmental impacts in the area of the event and/or adjacent waterways.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–046 to read as follows:

§ 100.35–T05–046 Choptank River, Cambridge, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the

Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2007 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(b) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. on September 22, 2007 to 5:30 p.m. on September 23, 2007.

Dated: August 23, 2007.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E7–17337 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. COTP San Francisco Bay 07–038]

Special Local Regulations for Marine Events; San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations in the navigable waters of San Francisco Bay for the annual U.S. Navy and City of San Francisco sponsored Fleet Week Parade of Navy Ships and Blue Angels Flight Demonstration to be held on October 4, 2007, through October 7, 2007. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, no persons or vessels may enter the regulated area without permission of the Captain of the Port (COTP) or his designated representative.

DATES: The regulations in 33 CFR 100.1105(b)(1), regulated area ''Alpha'' for Navy Parade of Ships, will be enforced from 11:30 a.m. to 1 p.m. on October 6, 2007. The regulations in 33 CFR 100.1105(b)(2), regulated area ''Bravo'' for the U.S. Navy Blue Angels Activities, will be enforced from 11:30 a.m. to 5 p.m. on October 4, 2007, and 12:30 p.m. to 5 p.m. on October 5, 2007, through October 7, 2007. If the U.S. Navy Blue Angels Activities are delayed by inclement weather, the regulation will also be enforced on October 8, 2007, from 12:30 p.m. to 5 p.m.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration in 33 CFR 100.1105; the Navy Parade of Ships will be enforced from 11:30 a.m. to 1 p.m. on October 6, 2007; and the U.S. Navy Blue Angels Activities will be enforced from 11:30 a.m. to 5 p.m. on October 4, 2007, and 12:30 p.m. to 5 p.m. on October 5, 2007, through October 7, 2007. If the U.S. Navy Blue Angels Activities are delayed by inclement weather, the regulation will also be enforced on October 8, 2007, from 12:30 p.m. to 5 p.m. These regulations can also be found in the October 1, 1993, issue of the **Federal Register** 58 FR 51242. Under the provisions of 33 CFR 100.1105 a vessel may not enter the regulated area, unless it receives permission from the COTP. Additionally, no person or vessel may enter or remain within 500 yards ahead of the lead Navy parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels. No person or vessel shall anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels. When hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1105 and 5 U.S.C 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners, and Broadcast Notice to Mariners.

Dated: 20 August 2007.

W.J. Uberti,

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

[FR Doc. E7–17340 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1539–F]

RIN 0938–AO72

Medicare Program; Hospice Wage Index for Fiscal Year 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth the hospice wage index for fiscal year 2008. This final rule also revises the methodology for updating the wage index for rural areas without hospital wage data and provides clarification of selected existing Medicare hospice regulations and policies.

EFFECTIVE DATES: These regulations are effective on October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Terri Deutsch, (410) 786–9462.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

1. Hospice Care

Hospice care is an approach to treatment that recognizes that the

impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling services and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Section 1814(i) of the Act provides payment for Medicare participating hospices.

2. Medicare Payment for Hospice Care

Our regulations at 42 CFR part 418 establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418 subpart G provides for payment in one of four prospectively-determined rate categories (routine home care, continuous home care, inpatient respite care, and general inpatient care) to hospices, based on each day a qualified Medicare beneficiary is under a hospice election.

B. Hospice Wage Index

Our regulations at § 418.306(c) require each hospice's labor market to be established using the most current hospital wage data available, including any changes to the Metropolitan Statistical Areas (MSAs) definitions, which have been superseded by Core-Based Statistical Areas (CBSAs).

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels. The original hospice wage index was based on the 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, a committee was formulated to negotiate a wage index methodology that could be accepted by the industry and the government. This committee, functioning under a process established by the Negotiated Rulemaking Act of 1990, was comprised of: National hospice associations; rural, urban, large and small hospices; multi-site hospices; consumer groups; and a government representative. On April 13, 1995, the Hospice Wage Index Negotiated Rulemaking Committee signed an agreement for the methodology to be used for updating the hospice wage index.

In the August 8, 1997 **Federal Register** (62 FR 42860), we published a final rule implementing a new methodology for calculating the hospice wage index based on the recommendations of the negotiated rulemaking committee. The committee statement was included in the appendix of that final rule (62 FR 42883).

The hospice wage index is updated annually. Our most recent annual update notice, published in the September 1, 2006 **Federal Register** (71 FR 52080), set forth updates to the hospice wage index for FY 2007. On October 3, 2006, we published a correction notice in the **Federal Register** (71 FR 58415) and we published a subsequent correction notice on January 26, 2007 (72 FR 3856), to correct technical errors that appeared in the September 1, 2006 notice.

1. Changes to Core-Based Statistical Areas

The annual update to the hospice wage index is published in the **Federal Register** and is based on the most current available hospital wage data, as well as any changes by the Office of Management and Budget (OMB) to the definitions of MSAs. The August 4, 2005 final rule (70 FR 45130) adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Micropolitan Statistical Areas and the creation of MSAs and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers for FY 2006. For FY 2006, the hospice wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index. As discussed in the August 4, 2005 final rule and in the September 1, 2006 notice, for FY 2007 and subsequent years we will use the full CBSA-based wage index values, as presented in Tables A and B of this final rule for FY 2008.

2. Raw Wage Index Values

Raw wage index values (that is, inpatient hospital pre-floor and pre-reclassified wage index values) as described in the August 8, 1997 hospice wage index final rule (62 FR 42860), are subject to either a budget neutrality adjustment or application of the wage index floor. Raw wage index values of 0.8 or greater are adjusted by the budget neutrality adjustment factor. Budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the updated wage index values will equal estimated payments that would have been made for these services if the 1983 wage index values had remained in effect. To achieve this budget neutrality, the raw wage index is multiplied by a budget neutrality adjustment factor. The budget neutrality adjustment factor is calculated by comparing what we would have paid using current rates and the 1983 wage index to what would be paid using current rates and the new wage index. The budget neutrality adjustment factor is computed and applied annually. For the FY 2008 hospice wage index in the final rule, FY 2007 hospice payment rates were used in the budget neutrality adjustment factor calculation.

Raw wage index values below 0.8 are adjusted by the greater of: (1) The hospice budget neutrality adjustment factor; or (2) the hospice wage index floor (a 15 percent increase) subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index (raw wage index value) of 0.4000, we would perform the following calculations using the budget neutrality factor (which for this example is 1.060988) and the hospice wage index floor to determine County A's hospice wage index:

Raw wage index value below 0.8 multiplied by the budget neutrality adjustment factor:

$(0.4000 \times 1.060988 = 0.4244)$.

Raw wage index value below 0.8 multiplied by the hospice wage index floor:

$(0.4000 \times 1.15 = 0.4600)$.

Based on these calculations, County A's hospice wage index would be 0.4600.

3. Hospice Payment Rates

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. Payment rates for FY

2008 will be updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs will be the market basket percentage for the fiscal year. Accordingly, the FY 2008 update to the payment rates for each of the four levels of care (routine home care, continuous home care, general inpatient care and inpatient respite care) will be the full market basket percentage increase for FY 2008. The rate update for FY 2008 is implemented through a separate administrative instruction and is not part of this rule. Historically, the rate update has been published through a separate administrative instruction issued annually in July to provide adequate time to implement necessary system changes and allow for provider notification. Providers determine their payment rates by applying the wage index in this rule to the labor portion of the published hospice rates.

4. Proxy for the Hospital Market Basket

As discussed above, the hospice payment rates for fiscal years after 2002 are adjusted each year based upon the full hospital market basket percentage increase. In the FY 2007 update notice (72 FR 52082) published on September 1, 2006, we indicated that beginning in April 2006, with the publication of March 2006 data, the Bureau of Labor Statistic's (BLS's) Employment Cost Index (ECI) began using a different classification system, the North American Industrial Classification System (NAICS), instead of the Standard Industrial Classification System (SIC), which no longer exists. The ECIs had been used as the data source for wages and salaries and other price proxies in the hospital market basket. In the FY 2007 update notice we noted that no changes would be made to the usage of the NAICS-based ECI; however, input was solicited on this issue. We received no comments. As a result, in the proposed rule we did not propose any changes.

II. Provisions of the Proposed Regulation and Analysis of and Responses to Public Comments

On May 1, 2007, we published a proposed rule in the **Federal Register** (72 FR 24116) that set forth the proposed hospice wage index for FY 2008. The following is a summary of each of the proposed provisions followed by our response to public comments. We received 19 timely items of correspondence, one from a physician, 6 from hospice providers, and 12 from associations.

A. Annual Update to the Hospice Wage Index

We did not propose any modifications to the hospice wage index methodology as described in the 1997 final rule (62 FR 42860). In accordance with our regulations and the agreement signed with other members of the Hospice Wage Index Negotiated Rulemaking Committee, we use the most current hospital data available to adjust for area wage differences. As noted above, payment rates for each of the four levels of care (routine home care, continuous home care, general inpatient care and inpatient respite care) are adjusted annually based upon the hospital market basket for that year and are promulgated through administrative instructions issued annually in July in order to allow for sufficient time for system changes and provider notification.

We use the previous fiscal year's hospital wage index data to calculate the hospice wage index values. For the FY 2008 proposed and final hospice wage index values, we used the FY 2007 hospital pre-floor and pre-reclassified hospital wage data. This means that the hospital wage data used for the hospice wage index is not adjusted to take into account any geographic reclassification of hospitals including those in accordance with sections 1886(d)(B) or 1886(d)(10) of the Act. We also do not take into account reclassifications in accordance with section 508 of the MMA or the out-migration adjustment for hospitals (section 505 of the MMA).

All hospice wage index values for FY 2008 are adjusted by either the FY 2008 budget neutrality adjustment factor or the wage index floor adjustment. For wage index values 0.8 or greater, the value is multiplied by the budget neutrality adjustment factor. Wage index values that are below 0.8, receive the greater of a 15 percent increase or the budget neutrality adjustment factor subject to a maximum wage index value of 0.8. In other words, the floor adjustment is the greater of the raw wage index value multiplied by the proposed budget neutrality adjustment factor or the raw wage index value for that area is multiplied by 15 percent subject to a maximum value of 0.8. Budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the updated wage index will equal estimated payments that would have been made for the same services if the wage index adopted for hospices in 1983 had remained in effect. For a detailed discussion of the methodology used to compute the hospice wage index see the September 4, 1996 proposed rule (61 FR 46579) and the August 8, 1997 final rule (62 FR 42860).

As indicated in the proposed rule, we did not propose any changes in the methodology used in calculating the hospice wage index values and we did not solicit comments. However, we received eight items of correspondence pertaining to future changes, the methodology for computing the wage index for Puerto Rico, the publication of the market basket update through administrative issuance, and the inadequacy of rural payment rates.

Comment: We received two comments stating that any future changes proposed for hospice payments should follow the negotiated rulemaking process rather than notice and comment. The same commenters also expressed support for a more reasonable and consistent approach to constructing wage index adjustments for hospitals and post acute providers. The commenters also indicated that any changes in the wage index approach should require an extended transition period to prevent disruptive swings.

Response: We thank the commenters for their suggestions and we will keep them under advisement as we analyze the need for future refinements.

Comment: One commenter suggested that the hospice payment rates be published with the hospice wage index regulations as is done in other prospective payment systems.

Response: As we discussed in the proposed rule, historically the payment rate updates have been promulgated through a separate administrative instruction or administrative issuance in July of each year to provide adequate time to implement necessary system changes. As the hospice wage index regulation is scheduled for publication at the end of August, inclusion of the hospice payment updates in this regulation would not allow sufficient time for system changes to be made to accommodate the October 1 implementation date of the payment updates.

Comment: Several commenters noted that there are challenges in furnishing hospice care in rural areas, citing underdevelopment, long distances for staff to travel, staff recruitment challenges and the need for rural hospices to be competitive in the wages and benefits that they provide. One commenter stated that rural areas adjacent to urban areas are at a greater disadvantage as they are competing for staff in urban areas with higher wages. Another commenter stated that rural home based salary adjustment based on the hospital wage index is inadequate

and should be reimbursed at a higher rate. The commenter also stated that there are extra costs for mileage expenses for rural staff and suggested that an ''expansive geography index'' be applied to the hospice wage index formula for rural counties. Another commenter indicated willingness to discuss this issue further to investigate ways to encourage hospice care in rural areas.

Response: We thank the commenters for their comments and suggestions. We recognize that there are challenges in providing health care in urban as well as in rural areas. Recruitment challenges, competitiveness in wages and benefits and commuting difficulties are factors that are facing all health care providers. We believe that the hospital wage data reflects these factors and as a result, the hospice wage index values are also reflective of these challenges. In addition, the application of the hospice floor for raw values below 0.8 provides a higher wage index value to many rural areas. However, we will consider these comments and suggestions as we analyze the need for future refinements to the hospice payment methodology.

Comment: One hospice provider from Puerto Rico provided us with a study that it had undertaken. It requested that this report be used by CMS to make the ''right'' decision about the correct wage index for Puerto Rico. This study concluded that 34 hospices in Puerto Rico will see a decrease in their hospice payments by 2.6 percent in FY 2008. Several of the conclusions presented in this study compare a hospice in Arecebo, Puerto Rico to hospitals in New England and Albuquerque, New Mexico, list the economic challenges in Puerto Rico, and suggested the payment rate that it believes should be used for Puerto Rico.

Response: We thank the commenter for sending its study to us. However, as the study concludes that payment rates and wage index values should be determined utilizing the same methodology used for the hospital wage index values, we believe the study is based on an erroneous and incorrect understanding of the content of the hospice wage index proposed rule as well as the methodology that had been developed and agreed upon through the negotiated rulemaking committee.

As noted above, the methodology for the hospice wage index was developed, and an agreement on the methodology was signed, by members of the Hospice Wage Index Negotiated Rulemaking Committee. We note that Puerto Rico was represented by the hospice associations' participants on the committee. Hospices in Puerto Rico had notice of the committee deliberations and they had an opportunity to apply to be on the committee, and were encouraged to attend and make a statement to the committee. A detailed description of the methodology is contained in both the September 4, 1996 proposed rule (61 FR 46579) and the August 8, 1997 final rule (62 FR 42860).

The commenter is incorrect in stating that the payment rates for Puerto Rico will decrease 2.6 percent in FY 2008. We indicated in the proposed rule that the impact analysis demonstrates the impact of the FY 2008 wage index values and is not a projection of the anticipated expenditures of hospice payments for FY 2008. The impact analysis compares hospice payments using the FY 2007 hospice wage index to the estimated payments using the FY 2008 wage index. For urban Puerto Rico, the proposed rule indicated that, using the FY 2007 payment rates and the FY 2008 wage index values, payments are anticipated to decrease 2.6 percent, which represents only the affects of the wage index and does not reflect the payment increase for FY 2008. As noted above, the FY 2008 hospice payment rates will reflect the market basket update.

We do not understand the study's comparison between Puerto Rico and Albuquerque, New Mexico or New England regions and as a result cannot respond. However, it is important to note that wage index values fluctuate from year to year for counties as well as regions and we do not believe that comparisons to other regions provide any substantive information. It is also important to note that the FY 2007 hospital pre-floor, pre-reclassified hospital wage data reflects data from the FY 2003 hospital cost reports and the data provided in the Puerto Rico study reflect data from later years. We will share the information provided in this study with the organizational component within CMS that develops the inpatient hospital wage data, as it appears that the study relates to the development of the hospital wage index.

B. Rural Areas Without Hospital Wage Data

When adopting OMB's new labor market designations, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data on which to base the calculation of the hospice wage index (70 FR 45135, August 4, 2005). For FY 2006 and FY 2007, we adopted a policy to use the FY 2005 pre-floor, pre-reclassified hospital wage index value for rural areas where no rural hospital wage data were available. We also adopted the policy that for urban labor markets without an urban hospital from which a hospital wage index data could be derived, all of the CBSAs within the State would be used to calculate a statewide urban average wage index data to use as a reasonable proxy for these areas. In the August 2005 final rule and in the September 2006 update notice, we applied the average wage index data from all urban areas lacking hospital wage data in that state. Currently, the only CBSA that is affected by this policy is CBSA 25980, Hinesville-Fort Stewart, Georgia. We proposed to continue this approach for urban areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculations for the FY 2008 and subsequent hospice wage indexes.

In the proposed rule we noted that under the CBSA labor market areas, there are no rural hospitals in rural locations in Massachusetts and Puerto Rico. In the August 2005 final rule (70 FR 45135) and in the September 2006 update notice (71 FR 52081), we applied the FY 2005 pre-floor, pre-reclassified hospital wage data in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico. In the proposed rule, we considered alternatives in our methodology to update the wage index for rural areas without hospital wage index data consistent with other prospective payment systems. We noted that we believe that the best imputed proxy for rural areas, would: (1) Use pre-floor, pre-reclassified hospital data; (2) use the most local data available to impute a rural wage index; (3) be easy to evaluate and; (4) be easy to update from year to year. Although our current methodology meets the first three criteria, it could not be easily updated from year to year because the FY 2005 pre-floor, pre-reclassified hospital wage data would continue to be used. Therefore, in cases where there is a rural area without rural hospital wage data, we proposed using the average pre-floor, pre-reclassified wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach meets all of the stated criteria (72 FR 24118).

We noted in the proposed rule that we interpret the term ''contiguous'' to mean ''sharing a border''. We cited the example of Massachusetts, where the entire rural area consists of Dukes and Nantucket counties. We determined that the borders of Dukes and Nantucket counties are contiguous with Barnstable and Bristol counties. Therefore, the pre-floor, pre-reclassified wage index values for the counties of Barnstable (CBSA 12700, Barnstable Town, MA) and

Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI-MA) would be averaged resulting in an imputed pre-floor, pre-reclassified rural wage index for rural Massachusetts.

While we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a critical access hospital (CAH), that do not submit the appropriate wage data), should a similar situation arise in the future, we may re-examine this policy.

In the proposed rule we noted that we do not believe that this policy would be appropriate for Puerto Rico. There are sufficient economic differences between hospitals in the United States and those in Puerto Rico, including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates that we believe necessitate a separate and distinct policy for Puerto Rico. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account those differences. Our policy of imputing a rural wage index based on the wage index(es) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. We also noted that while we have not yet identified an alternative methodology for imputing a wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. Accordingly, we propose to continue using the most recent pre-floor, pre-reclassified wage index previously available for Puerto Rico, which is 0.4047 (72 FR 24118–19).

Comment: We received four items of correspondence in response to our proposal for rural areas without hospital wage data. Two commenters supported the proposal. Two commenters stated that the proposed methodology, while not ideal, comes closest to what the commenters believe is an equitable solution in resolving a perceived flaw in using hospital data to adjust payment to non-hospital providers. The commenters also assumed that a better alternative would emerge over the next few years in the course of revising the hospital wage index. One commenter agreed with the methodology but asked that we do not use this formula for other situations without review and reexamination of the policy. The same commenter commended us for demonstrating flexibility and good judgment in creating a different system for Massachusetts and Puerto Rico.

We note that we received no comments on the methodology employed for urban areas without a hospital from which to derive hospital wage data.

Response: We thank the commenters for their support. We continue to believe that our proposed methodology results in the most appropriate imputed proxy for rural areas in meeting the criteria we identified as follows: (1) Use pre-floor, pre-re-classified hospital data, (2) use the most local data available to impute a rural wage index, (3) be easy to evaluate; and (4) be easy to update from year to year. We will consider the suggestion for evaluating the policy if needed in other situations.

C. Nomenclature Changes

We proposed to clarify that all hospice rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage index data used to determine the current hospice wage index (72 FR 24119). We received no comments on this proposal.

D. Payment for Hospice Care Based on the Location Where Care Is Furnished

Under the Medicare hospice program, hospice providers receive payment for four levels of care based upon the individual's needs. The payment rates are adjusted to reflect the variation in geographic locations. Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on or after October 1, 1997, required the application of the local wage index value of the geographic location at which the service is furnished for hospice care provided in the home. Prior to this provision, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. In the proposed rule, we noted that we believe that for the majority of hospice providers the office and the site for the provision of home and inpatient care occur in the same geographic area. However, with the substantial growth of hospice providers in multiple states and with multiple sites within a State, hospice providers have been able to inappropriately maximize reimbursement by locating their offices in high-wage areas and delivering services in a lower-wage area. We also believe that hospice providers are able to inappropriately maximize reimbursement by locating their inpatient services either directly or under contractual arrangements in lower wage areas than their offices.

Section 4442 of the BBA applies the wage index value of a home's geographic location for services provided there, but is silent as to what wage index value should be used for hospice services provided in an inpatient setting. We believe that the application of the wage index values should reflect the location of the services provided rather than the location of an office. We believe such application results in a reimbursement rate that is a more accurate reflection of the wages paid by the hospice for the staff used to furnish care. We proposed that effective January 1, 2008, all payment rates (routine home care, continuous home care, inpatient respite and general inpatient care) be adjusted by the geographic wage index value of the area where hospice services are provided. This would require hospice providers to include the geographic location of the inpatient facility for general inpatient and inpatient respite levels of care on claims submitted for payment. We proposed to modify § 418.302 accordingly.

In the proposed rule we also indicated that as hospice claims do not contain information identifying the location of the facility where general inpatient and respite care are provided, we are unable to predict the savings or costs associated with the changes associated with this proposed provision. However, we believe most hospice providers provide hospice care in the same geographic location as their offices. Therefore, we believe the impact of implementing this proposal will be negligible.

Comment: We received eight items of correspondence, of which six supported the provision to base payment rates on the geographic wage index value of the area where inpatient hospice services are provided.

Response: We thank the commenters for their support of this provision.

Comment: One commenter suggested that we suspend the implementation of this provision until we have additional data from providers on the impact.

Response: In the proposed rule we indicated that, as hospice claims do not contain information identifying the location of the facility where inpatient care is provided, we are unable to predict the savings or costs associated with changes in this provision. Effective January 1, 2007, hospice providers were required to indicate the type of location where care was provided (for example, nursing home, assisted living facility, hospital unit), but not the geographic location (which would be used to adjust payments). As we have indicated, we believe that for most providers, the location of the inpatient facility and the hospice provider are the same. We do not believe that postponing the

implementation of this provision would enable us to collect any additional information.

Comment: One commenter indicated that this change will significantly increase the complexity of filing hospice claims and will increase hospice costs due to the need to include the CBSA for the geographic location, as well as the code of where the patient is receiving hospice services.

Response: We appreciate the concern regarding the complexity of filing claims and the perceived increased costs to hospices. We are in the process of developing operational instructions that we believe will help simplify the billing process. Hospice providers currently are required to identify the geographic location of their patients for the routine home care and continuous home care levels of care, and the location of the hospice office for general inpatient care and inpatient respite care. We are now also requiring hospice providers to identify the geographic location where inpatient care is provided. We believe that for the majority of hospice providers, the location of the facility for the provision of both the general inpatient and inpatient respite levels of care will be the same as the location of the hospice office. For those majority of cases, this change will require the hospice provider to indicate the same CBSA location of the office on the claims as the location of the facility where inpatient levels of care are provided. As a result, we believe that the impact on hospices for implementing this provision should be negligible as most hospices currently provide this information on the claims.

Comment: Several commenters concurred with the provision but objected to the statement that hospice providers are able to inappropriately maximize reimbursement by having their offices located in a higher wage area. One commenter indicated that the statement was misleading and unnecessarily harsh. Another commenter suggested removing the statement. One commenter interpreted this statement as being demeaning and inflammatory. The same commenter stated that most hospices would not benefit from manipulating the location of an inpatient facility. Several commenters indicated that there is nothing prohibiting a hospice from having their inpatient facilities in a higher wage area, though the commenters stated it was doubtful that a hospice would do this or arrange contracts in order to manipulate reimbursement. Some commenters stated that urban areas have higher rates and that hospices generally have contracts with all hospitals in an area. Some commenters indicated patients have choices about where to receive care and would complain if they were forced to receive inpatient care out of their area.

Response: While we appreciate the commenters objection to the statement that we made about hospice providers being able to inappropriately maximize reimbursement by locating their offices in a higher age area, we concur with the commenter that nothing prohibits a hospice from locating its inpatient services, either directly or under contractual arrangements, in a higher wage area, as well. In fact, we have received anecdotal information that leads us to believe that there are hospice offices that have been intentionally located in higher wage areas than those of their patients in order to maximize their reimbursement. We supported our proposal by noting the potential for maximizing reimbursement based on the location of the main office, which was the same rationale used by the congressional committee when the BBA 1997 provision requiring the application of the local wage index of the geographic location where the service is furnished for hospice care provided in the home was enacted. We believe that the same rationale applies to the inpatient facility locations as well. Our intent for this provision is to have all levels of payment adjusted by the wage index that applies to the site where the service is being provided.

Comment: One commenter interpreted the proposed provision as reducing reimbursement to a lesser amount based on distance from the main office. The same commenter stated that staff were paid at the home office area rate and suggested that payment be based on the costs at the main office.

Response: We believe that the suggestion that using distance from the main office determines payment rates is a misinterpretation of the intent of this provision as well as the statement concerning maximizing reimbursement based upon the location of the hospice main office. As we have discussed in the proposed rule, we were not proposing to modify the methodology used for computing the hospice wage index values. The intent of the proposal is to employ the same methodology for applying the wage index value for geographic variations regardless of where hospice care is provided.

E. Educational Requirements for Nurse Practitioners

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173). Section 408 of the MMA, Recognition of Attending Nurse Practitioners as Attending Physicians to Serve Hospice Patients, amended sections 1861(dd)(3)(B) and 1814(a)(7) of the Act to add nurse practitioners (NPs) to the definition of an attending physician for beneficiaries who have elected the hospice benefit. Section 408 of the MMA was implemented through an administrative issuance (Change Request (CR) 3226, Transmittals 22 and 304, September 24, 2004). In the August 4, 2005 FY 2006 final rule (70 FR 45139), we revised § 418.3 to reflect that an attending physician can be a nurse practitioner who meets the training, education and experience requirements as the Secretary may prescribe.

We indicated in the proposed rule that we believe that the definition of attending physician, which includes nurse practitioners under the Medicare hospice benefit, should be consistent with the provisions of section 410.75 that provide for Medicare Part B coverage of nurse practitioner services. Therefore, to ensure consistency, we proposed to revise the definition of ''attending physician'' at § 418.3(1)(ii) to cross reference the training, education, and experience requirements as described in § 410.75(b).

Comment: We received six items of correspondence regarding our proposal to conform the educational requirements for nurse practitioners serving as the attending physician to the requirements described in § 410.75. All commenters supported this provision. One commenter requested that the hospice physician definition be revised to include nurse practitioners, although the commenter recognized that any such revision could not allow nurse practitioners to certify the terminal illness of a patient. Another commenter suggested that the definition of attending physician be clarified by using the term ''attending nurse practitioner'' instead of referring to nurse practitioners as ''attending physicians.'' One commenter requested that the nurse practitioner qualifications provisions at § 410.75 be amended to reflect current and evolving educational requirements for advanced practice registered nurses. The commenter requested that the term ''master's degree'' in § 410.75(b)(ii)(4) be replaced with ''graduate degree'' to reflect nurse practitioners with doctoral degrees.

Response: We thank the commenters for their support of this provision. As noted in the proposed rule and earlier in this rule, the implementation of section 408 of the MMA, which amended sections 1861(dd)(3)(B) and

1814(a)(7) of the Act to add nurse practitioners to the definition of an attending physician, was discussed in the August 4, 2005 final rule (70 FR 45130). Section 418.304(e)(2)(iv) specifies that nurse practitioners may bill and receive payment for services provided as the attending physician, only if the services are not related to the certification of the terminal illness in § 418.22(c)(1)(ii). Section 418.22(c) specifies that certification of the terminal illness is obtained from ''the medical director of the hospice or the physician member of the hospice interdisciplinary group''. Therefore, we believe it would be inconsistent with statute and regulations to allow nurse practitioners to bill and receive payment for certifying an individual's terminal illness. As the role of the nurse practitioner is explicit in statute, nurse practitioners are not included as a hospice physician and may not serve in that role.

We concur with the commenter that the definition of attending physician should use the term ''attending nurse practitioner''. However, as the statute at sections 1861(dd)(3)(B) and § 1814(a)(7) explicitly uses the term ''attending physician'' for a nurse practitioner serving as the attending physician, we do not accept this recommendation.

We did not propose to replace the term master's degree in 410.75(b)(ii)(4) with ''graduate degree''. Therefore, we will not make the change in this final rule. However, we will provide your suggestion to the area within CMS responsible for advanced practitioner educational requirements.

F. Caregiver Breakdown and General Inpatient Care

In the proposed rule, we discussed a concern that some hospice providers are requesting payment for the general inpatient level of care for circumstances that do not qualify under the statute at section 1861(dd)(1)(G) of the Act, our regulations at § 418.202(e), or Medicare hospice policy in Chapter 9 of the Medicare Benefit Policy Manual. We provided clarification of existing statute, regulation and policy in the proposed rule and did not propose any changes (72 FR 24120).

As discussed in the proposed rule, the Medicare hospice benefit places emphasis on the provision of items and services to enable an individual to remain at home in the company of family and friends. Section 1861(dd)(1)(G) of the Act provides for short-term inpatient hospice care to be available when an individual's pain and symptoms must be closely monitored or the intensity of interventions that are required cannot be provided in any other settings. Inpatient respite care is available for family members, who serve as the primary caregivers, to obtain rest for a period of no more than 5 days at a time. Hospice providers should submit claims for inpatient respite care in situations where there is an unexpected loss of the individual's support structure that results in an inability to maintain the individual in his or her home, but the individual does not require an inpatient level of care.

Medicare policy states that skilled nursing care may be required by a patient whose home support has broken down, if this breakdown makes it no longer feasible to furnish needed care in the home setting. If the hospice and the caregiver, working together, are no longer able to provide the necessary skilled nursing care in the individual's home, and if the individual's pain and symptom management can no longer be provided at home, then the individual may be eligible for a short term general inpatient level of care. To receive payment for general inpatient care under the Medicare hospice benefit, beneficiaries *must* require an intensity of care directed towards pain control and symptom management that cannot be managed in any other setting. It is the level of care provided to meet the individual's needs and not the location of where the individual resides, or caregiver breakdown, that determine payment rates for Medicare services.

Caregiver breakdown is the loss of the individual's support structure and should not be confused with the coverage requirements for medically reasonable and necessary care for pain and symptom management that cannot be managed in any other setting. Therefore, caregiver breakdown should not be billed as general inpatient care unless the coverage requirements for this level of care are met. As discussed above, for the general inpatient level of care, the intensity of interventions required for pain and symptom management is such that it cannot be provided in any setting other than an inpatient setting.

As explained in the proposed rule, this is a clarification of current Medicare policy and as such does not create new limitations on access to hospice care. As noted in the proposed rule, we intend to monitor the usage of general inpatient care. Additionally, the circumstances addressed by this policy, and the clarification discussed above, should not be construed as similar to situations where an individual does not have family, friends or other individuals who are able to take on the role of a caregiver when a hospice election is made. In the proposed rule, we indicated that inpatient respite care could be used in situations where there is caregiver breakdown. However, in situations where there is a lack of a caregiver at the time of the election, the inpatient respite level of care does not apply. Inpatient respite care is unavailable when there is no caregiver to whom relief must be provided. The established policy that the level of care required to provide pain and symptom management determines payment and not the location of where the individual resides or receives hospice services, also applies in situations where there is not an appropriate caregiver. We recognize the difficulties surrounding the provision of hospice care to an individual who is terminally ill and who does not have caregivers at home. This may be particularly challenging in rural areas. Section 409 of the MMA (Pub. L. 108–173) established the Rural Hospice Demonstration which hopes to test alternative mechanisms for providing hospice services for beneficiaries who lack an appropriate caregiver and who reside in rural areas. In this demonstration, a hospice organization may provide all services in an inpatient facility which serves as a beneficiary's home; however, payment for inpatient care must meet the usual level of care requirements. In this demonstration, inpatient respite care is not possible since there is no caregiver. For specific information on this demonstration, refer to: *http://www.cms.hhs.gov/DemoProjectsEvalRpts/MD/itemdetail.aspitemID=CMS1183983*.

Comment: We received nine items of correspondence regarding the clarification of the general inpatient level of care and its use when there is a breakdown in caregiver support. Several commenters supported the clarification, however the majority did not, as we describe below. Several commenters stated that they shared our concern that the general inpatient level of care not become a source of abuse and the need to focus on hospice providers who use the general inpatient level of care inappropriately. Two commenters stated that they supported steps to eliminate any potential collusion or inducements in this area.

Response: We appreciate the comments and thank those who were in support of this provision. The intent of this clarification was to ensure that the general inpatient level of care be utilized appropriately and in accordance with statute, regulations and policy. Our focus was not on fraudulent or abusive use of the general inpatient level of care, but rather on ensuring that

the general inpatient level of care is properly utilized in accordance with established criteria.

Comment: Some commenters believed that the clarification was overly prescriptive while others believed that this was not a clarification of existing policy, but was a new interpretation. Some commenters expressed that the intent of the general inpatient level of care, at the inception of the benefit, was to address the need for pain control and symptom management as well as care for patients whose caregiver or home support has broken down, making it no longer feasible to furnish care in the home. One commenter indicated that use of the general inpatient level of care in the event of caregiver breakdown met the requirements in 418.302 as a condition of participation. The same commenter added that the proposed interpretation shifts the focus from caring for patients in the appropriate setting to a billing and reimbursement issue. Some commenters stated that this provision was designed to reduce expenditures without regard to patient safety and hospice expenses.

Other commenters also strongly disagreed with the clarification. They indicated that Medicare policy has been interpreted for more than twenty years to mean that general inpatient level of care can be used for caregiver breakdown and the practice of billing at the higher level of care in those circumstances is consistent with written CMS and fiscal intermediary guidance.

Some commenters stated that the definition of general inpatient care in the hospice regulations supported the use of general inpatient level of care for caregiver breakdown. One commenter stated that it was inappropriate to punish patients by removing a long established benefit for the hospice program because of the perception that some hospices are using the general inpatient level of care inappropriately.

Response: We disagree with the commenter who believes that this clarification is a new interpretation. Rather, we seek to clarify here our established policy by providing what we believe is a helpful explanation of how our policies should be interpreted and applied. We are not making any policy changes with this clarification. We believe that this clarification is needed because, as some commenters recognize, the general inpatient level of care has been used for situations where caregiver breakdown has occurred.

The level of care needed to manage pain and symptoms is the basis for the general inpatient level of care in the statute, regulations and policy, none of which recognizes caregiver breakdown as an indication for the general inpatient level of care. The Medicare Benefit Policy Manual, Chapter 9—Coverage of Hospice Services, section 40.1.5—Short-Term Inpatient Care, indicates that skilled nursing care may be needed by a patient whose home support has broken down. In the proposed rule we acknowledged this and indicated that if the hospice and the caregiver, working together, are no longer able to provide the necessary skilled nursing care in the individual's home, and if the individual's pain and symptom management can no longer be provided at home, then the individual may be eligible for a short term general inpatient level of care. Section 1861(dd)(1) of the Act defines hospice care as the items and services to be provided to a terminally ill individual by a hospice directly or under arrangement. The statute goes on to specify the items and services, but does not include caregiver services. This means that Medicare does not pay for caregiver services under the hospice benefit. In further support, § 418.98 sets forth the hospice conditions of participation requiring hospices to make available ''inpatient care* * * for pain control, symptom management and respite purposes * * *.'' Section 418.202 lists the covered hospice services and includes short-term inpatient care at § 418.202(e), stating ''inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management. Inpatient care may also be furnished as a means of providing respite for the individual's family or other persons caring for the individual at home.'' Further, § 418.302(b)(4) provides that ''a general inpatient care day is a day on which an individual who has elected hospice care receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings.''

We believe that there is no support for the comments that suggest that the intent of the general inpatient level of care was to include care for patients whose home support has broken down. We also disagree with the comment that this clarification shifts the focus from caring for patients to a purely billing and reimbursement issue and that there needs to be a humane and practical alternative. Our discussions in the proposed rule and in this final rule have focused on the provision of care and the level of care needed by the patient. However, certain billing requirements and payment amounts are associated with each level of care. In cases where a particular level of care is provided because of circumstances that are inappropriate to warrant that particular level of care (here, general inpatient provided because of caregiver breakdown), it is inappropriate for the hospice to bill and receive payment for the general inpatient level of care.

Comment: Several commenters indicated that the general inpatient level of care was appropriate in rare circumstances where the patient's care network breakdown is not recoverable after a short period of inpatient respite care. Other commenters expressed the need to provide inpatient care immediately for caregiver breakdown. The same commenters believe that the immediate need would prohibit the use of inpatient respite care, which they indicated was a planned admission. One commenter strongly objected to the statement in the proposed rule that specified the requirement for the provision of an intensity of care to support the general inpatient level of care. However, some commenters stated that more frequent use of general inpatient level of care is appropriate as hospices are experiencing difficulty finding adequate caregivers.

Some commenters stated that general inpatient level of care provided the only option other than discharging patients from the hospice benefit to long term care facilities. Others stated that the proposed clarification implied that hospice care must be terminated when there is a situation of caregiver breakdown, as there was no Medicare hospice benefit category to care for patients without caregiver support. Some commenters stated that we did not address how caregiver breakdown situations should be addressed while others implied that unless hospices could bill for general inpatient level of care for caregiver breakdown, patients' symptoms could be uncontrolled necessitating the general inpatient level of care.

Response: We disagree with the comment that we did not indicate how caregiver breakdown situations should be addressed. We indicated in the proposed rule that there is nothing prohibiting a Medicare approved facility from serving as the individual's home. However, Medicare daily per-diem payments are based on medically reasonable and necessary levels of care as described in the Medicare regulations at § 418.302: A routine home care day is a day on which an individual is at home and is not receiving continuous care; a continuous home care day is a day on which an individual is not in an inpatient facility and receives hospice

care consisting predominantly of nursing care on a continuous basis at home during brief periods of crisis as described in § 418.204(a), to maintain the terminally ill patient at home; an inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis for respite; and a general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other setting. Medicare payment is made based on the medically reasonable and necessary level of care provided, and not simply where that care is provided. As discussed above, it is not appropriate to bill Medicare for the general inpatient care day for situations where the individual's caregiver support has broken down unless the coverage requirements for the general inpatient level of care are otherwise met.

We disagree with the comments that patients will need to be discharged from the hospice benefit to long term care facilities because discharge for caregiver breakdown does not meet the discharge requirements in the regulations at § 418.26. The requirements for discharge at § 418.26 state that a hospice may discharge a patient if the patient moves out of the hospice service area or transfers to another hospice; the hospice determines that the patient is no longer terminally ill; or the hospice discharges the patient for cause. We also disagree with the comment that patients will be forced to revoke the hospice benefit if there is caregiver breakdown. Revocation of the hospice benefit as described in § 418.28 is an action initiated by the individual (patient) and not by the hospice provider. Finally, we disagree with the comment that denying the use of the general inpatient level of care for caregiver breakdown will result in limitation of access. We have discussed various ways of providing care in this situation, such as the use of inpatient respite or use of alternative sources of payment for room and board, that we believe are appropriate alternatives to meeting the needs of the individual.

Comment: One commenter stated that hospices have seen an erosion of the use of the inpatient benefit and many offer very little inpatient care. This commenter concluded that the clarification represents a reduction in the benefit and will create a new limitation on access to hospice care and patients will seek inpatient hospital admissions instead of receiving hospice services at the general inpatient level of care. Several commenters stated that fiscal intermediaries have allowed the use of general inpatient care for caregiver breakdown.

Response: We disagree that our clarification on the use of the general inpatient level of care represents a reduction in the Medicare hospice benefit and that it will result in a limitation on access to hospice care. As we noted above, we are not making any policy changes concerning general inpatient care, rather, we are clarifying our established policy. We also disagree that there has been an erosion of the use of general inpatient level of care. Our data, which is available on the hospice Web site at *http://www.cms.hhs.gov/center/hospice.asp* demonstrates that use and payment for the general inpatient level of care has been increasing each year. We also do not agree that better compliance with statute, regulations and policy will limit access to hospice care nor do we see our clarification as an inducement to increase hospital admissions.

Comment: One commenter questioned why this clarification was being made when we were unable to quantify the extent of the use of general inpatient in the event of caregiver breakdown and suggested that further analysis be done. The same commenter indicated that the cost savings were inaccurate as our assumption of potential savings is based on current reimbursement rates for inpatient respite services. The same commenter believes that the inpatient respite care payment rate is inadequate. Several other commenters indicated that the reimbursement rate for inpatient respite care was inadequate.

Several commenters suggested the following: Extending the current 5-day limitation on inpatient respite care; revising policy to allow for the use of the general inpatient level of care when documentation indicates that a sufficient caregiver network cannot be restored in a few days; or establishing an alternative payment mechanism in the hospice benefit for situations where there is caregiver breakdown.

One commenter suggested that Medicare work with hospice providers to increase the average length of stay to that which was originally intended in legislation and in regulation. The same commenter stated that studies show that hospice care saves Medicare dollars. Several offered to work with CMS to find an alternative policy to meet patient needs while protecting the Medicare trust fund.

Response: We appreciate these suggestions and will keep them in mind as we continue to evaluate Medicare hospice payment policy. We noted in the proposed rule that we are unable to quantify the use of the general inpatient level of care for caregiver breakdown. In the proposed rule we provided an example of the potential impact, as we did not have empirical data to suggest the actual usage. This example demonstrated the cost savings to Medicare by using as an example, what we believe could be a cost saving if we assumed that 5 percent of the days and expenditures for general inpatient level of care were attributable to caregiver breakdown. However, the unavailability of exact utilization rates does not preclude us from ensuring that the general inpatient level of care is being billed as we intended. Based upon the comments we received, we believe that the use of the general inpatient level of care for caregiver breakdown may be more pervasive than we had envisioned at the time of the proposed rule.

We disagree with the commenter who suggested that the original legislation and regulation intended for the average length of stay to be at a specified level. While the statute defines the terminal diagnosis as having a prognosis of six months or less if the disease runs its normal course, this does not imply that there is, or ever was, a targeted length of stay that is required. The regulations require that an individualized plan of care be developed and updated to identify patient and family needs and the medically reasonable and necessary items and services that are required to meet these needs. In addition, as individuals vary in their responses to illness and care, we expect to see some variability in lengths of stay. We do not believe that it is feasible or prudent to specify or predetermine what lengths of stay should or must be achieved to measure or evaluate the effectiveness of care provided.

Regarding the comment that the reimbursement rate for inpatient respite care is inadequate, in the proposed rule, we did not propose to make any adjustments on the payment rates and merely indicated that the hospice payment rates are adjusted annually based upon the full market basket percentage increase. We are aware of studies which suggest that the inpatient respite care payment rate may not reflect the costs for providing this level of care. We will consider the comments made concerning the inpatient respite care rate as we continue to examine Medicare hospice payment policy.

G. Certification of the Terminal Illness

Section 1814(a)(7)(A)(i) of the Act stipulates that the individual's attending physician and the hospice medical director initially certify the individual's terminal diagnosis with a prognosis of

six months or less if the disease runs its normal course. Our regulations at § 418.22 discuss the requirements of the certification, including documentation requirements. As discussed in the proposed rule, we are aware that some providers permit the hospice admission nurse to determine eligibility for hospice services and to certify the individual's terminal diagnosis. In the proposed rule, we explained that the statute is explicit in the requirement that the attending physician and the hospice medical director determine the terminal diagnosis, and his or her signature on the certification attests to that fact.

Comment: We received three items of correspondence regarding this clarification. One commenter supported the clarification of the responsibility of the hospice medical director and the attending physician to certify the terminal illness. One commenter asked if a hospice medical director visit is required at the time of admission to a hospice and what is the time frame for the visit. Another commenter stated that concurrence of the hospice medical director and the attending physician may be tacit and no communication is required between them.

Response: As discussed above, section 1814(a)(7)(A)(i) of the Act stipulates that the individual's attending physician and the hospice medical director each initially certify that the individual is terminally ill with a medical life expectancy of six months or less if the disease runs its normal course. Our regulations at § 418.25(a) of hospice regulations indicate, that the hospice admits a patient only on the recommendation of the medical director in consultation with, or with input, from the patient's attending physician (if any). As noted in the proposed rule, the requirements of the physician certification, including supportive documentation, were discussed in the Medicare Program; Hospice Care Amendments proposed rule (67 CFR 70363) and final rule (70 CFR 70548). Current regulations do not address a time frame for a physician or hospice medical director visit.

III. Provisions of the Final Regulations

In this final rule, we are adopting the following provisions, as set forth in the proposed rule, without change. We are also publishing the FY 2008 urban and rural wage index values for hospices in the addendum as well as the table that reflects the impact of the FY 2008 wage index values.

A. Annual Update to the Hospice Wage Index

The FY 2008 hospice wage index values have been computed utilizing OMB's geographic location definitions (CBSA). The budget neutrality adjustment factor was computed utilizing data from the FY 2006 claims processed through June 2007. The FY 2008 budget neutrality adjustment factor of 1.066671 was applied to hospital wage data above 0.8. The budget neutrality adjustment factor or the hospice floor was applied to the hospital wage data below 0.8, not to exceed 0.8. The wage index values are reflected in Table A and Table B of the Addendum. Specifically, Table A reflects the FY 2008 wage index values for urban areas under the CBSA designations. Table B reflects the FY 2008 wage index values for rural areas under the CBSA designations.

B. Rural Areas Without Hospital Wage Data

For FY 2008 and subsequent hospice wage index values, for urban labor markets without an urban hospital from which hospital wage index data could be derived, all of the CBSAs within the State will be used to calculate a statewide urban average wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that is affected by this is CBSA 25980, Hinesville-Fort Stewart, Georgia.

For FY 2008 and subsequent hospice wage index values, in cases where there is a rural area without rural hospital wage data, we will use the average pre-floor, pre-reclassified wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach meets the criteria that we believe would be the best imputed proxy for rural areas, which (1) uses pre-floor, pre-reclassified hospital data; (2) uses the most local data available to impute a rural wage index; (3) is easy to evaluate; and (4) is easy to update from year-to-year. Currently there are no hospitals in rural locations in Massachusetts and Puerto Rico.

We interpret the term ''contiguous'' to mean sharing a border. For example, we have determined that the borders of Dukes and Nantucket counties are contiguous with Barnstable and Bristol Counties. Therefore, the pre-floor, pre-reclassified wage index values for the counties of Barnstable (CBSA 12700, Barnstable Town, MA) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI–MA) would be averaged resulting in an imputed pre-floor, pre-reclassified rural wage index for rural Massachusetts. Should a similar situation arise in the future, we may re-examine this policy.

As discussed in the proposed rule, as there are sufficient economic differences between hospitals in the United States and those in Puerto Rico, we do not believe that this policy would be appropriate for Puerto Rico. We also noted that as we have not yet identified an alternative methodology for imputing a wage index for rural Puerto Rico, we will continue to evaluate the use of other sources. Accordingly, we will continue to use the most recent pre-floor, pre-reclassified wage index previously available for Puerto Rico.

C. Nomenclature Changes

This final rule and all subsequent hospice rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current hospice wage index. The tables in this final rule reflect changes made by these bulletins. The OMB bulletins may be accessed at *http://www.whitehouse.gov/omb/bulletins/index.html.*

D. Payment for Hospice Care Based on the Location Where Care Is Furnished

Effective January 1, 2008, all payment rates (routine home care, continuous home care, inpatient respite and general inpatient care) will be adjusted by the geographic wage index value of the area where hospice services are provided. In other words, the wage component of each payment rate is multiplied by the wage index value applicable to the location in which the hospice services are provided. Section 418.302 is amended to reflect this change. Hospice providers will be required to indicate on hospice claims, the CBSA for the location where hospice care is provided.

E. Educational Requirements for Nurse Practitioners

In order to align the hospice qualifications for nurse practitioners under § 418.3 and Part B nurse practitioners under § 410.75, the definition of ''attending physician'' at § 418.3 is revised to cross reference the training, education and experience requirements described in § 410.75(b).

F. Caregiver Breakdown and General Inpatient Care

We are not implementing any changes regarding the general inpatient level of care and caregiver breakdown, but are providing clarification of existing policy, statute, and hospice regulations. The Medicare hospice benefit provides for care that is medically reasonable and necessary for the palliation and

management of terminal and related conditions, and is structured in such a way to enable the individual with a terminal condition to remain at home, in the company of family and friends. The statute, our regulations at § 418.202(e), and Medicare hospice policy require that in order to receive payment for general inpatient care under the Medicare hospice benefit, beneficiaries must require an intensity of care directed towards pain control and symptom management that cannot be managed in any other setting. It is the level of care provided to meet the individual's needs that determines payment rates for Medicare services. In other words, caregiver breakdown should not be billed as general inpatient care regardless where the services are provided, unless the intensity-of-care requirement is met. If an individual no longer is able to remain at home or if the individual's caregiver is no longer able to provide care, and the required care does not meet the requirements for general inpatient care, the hospice may not bill this care at the general inpatient level of care. This situation is considered to be caregiver breakdown. This does not imply or suggest that the individual must be discharged from the hospice if caregiver breakdown occurs. It does mean that the hospice must find alternative means for the provision of caregiver services, which may include payment for room and board, as Medicare does not pay for caregiver services, nor does it pay for room and board.

G. Certification of Terminal Illness

We are not making any changes to the certification of terminal illness requirements. We are clarifying that the statute requires that the attending physician and the hospice medical director, not the admission nurse, initially certify the terminal diagnosis with a prognosis of six months or less if the disease runs its normal course. The regulations require that there be documentation in the medical record to support the initial as well as any subsequent certifications. The admission nurse may obtain information supporting the terminal illness in order to allow the attending physician and the medical director to have the necessary information to make the terminal illness determination. But, the determination of the terminal illness cannot be delegated to an admission nurse or any other employee.

IV. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. We estimated the impact on hospices, as a result of the changes to the FY 2008 hospice wage index. As discussed previously, the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). This final rule updates the hospice wage index in accordance with our regulation and that methodology, incorporating the CBSA designations used in the FY 2007 hospital wage index data.

- Table 1 categorizes the impact of the FY 2008 wage index values on hospices by various geographic and provider characteristics. We estimate that the total hospice payments will increase $2,860,000 as a result of the application of the FY 2008 wage index values. As discussed in the proposed rule as well as in this final rule, the impact analysis only reflects the FY 2008 wage index values. The FY 2008 hospice payment rates are promulgated through administrative issuance and are not included in the impact analysis.
- Table A reflects the FY 2008 wage index values for urban areas designations.
- Table B reflects the FY 2008 wage index values for rural areas designations.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that this final rule is not an economically significant rule under this Executive Order.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospices and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any one year (for details, see the Small Business Administration's regulation at 65 FR 69432, that sets forth size standards for health care industries). For purposes of the RFA, most hospices are small entities. As indicated in Table 1 below, there are 2,956 hospices. Approximately 53 percent of Medicare certified hospices are identified as voluntary, government, or other agencies and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 79 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis. Furthermore, the wage index methodology was previously determined by consensus, through a negotiated rulemaking committee that included representatives of national hospice associations, rural, urban, large and small hospices, multi-site hospices, and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and it was adopted into regulation in the August 8, 1997 final rule. In developing the process for updating the wage index in the 1997 final rule, we considered the impact of this methodology on small entities and attempted to mitigate any potential negative effects.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a CBSA and has fewer than 100 beds. We have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more. This final rule is not anticipated to have an effect on State, local, or tribal governments or on the private sector of $120 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

B. Anticipated Effects

As discussed in the proposed rule, we are unable to quantify the extent of the usage of the general inpatient level of care in the event of caregiver breakdown. Therefore, we are unable to definitively anticipate the impact of our clarification of the general inpatient level of care policy in the event of caregiver breakdown. For this reason, we solicited comment on what the impact of our clarification might be. We did not receive any substantive comments on the impact. Based on anecdotal evidence as well as substantial increases in the number of claims submitted for general inpatient care, however, we believe a small proportion of patient days attributed to general inpatient care would be appropriately allocated to inpatient respite care with this clarification. Significant savings could be realized even if only a small proportion of patient days attributed to general inpatient care were allocated to inpatient respite care.

In the proposed rule we cited an example to determine the impact. In that example, we allocated 5.0 percent of general inpatient care days to inpatient respite care, using the FY 2005 patient days, expenditures and number of beneficiaries electing the hospice benefit to estimate the impact of the clarification of existing policy in this final rule. The number of inpatient days was adjusted from 1,250,678 to 1,188,144. The number of inpatient respite days was adjusted from 96,646 to 159,180. While inpatient respite expenditures increased from $14,000,000 to $23,058,570, general inpatient care expenditures decreased from $737,300,000 to $700,435,000. In total, if 5.0 percent of patient days that were attributed to general inpatient care in FY 2005 were allocated to the inpatient respite level of care, it would have resulted in net savings of $27,806,430.

The impact analysis of this final rule represents the projected effects of the changes in the hospice wage index from FY 2007 to FY 2008. We estimate the effects by estimating payments for FY 2008 using the FY 2007 wage index values while holding all other payment variables constant.

We note that certain events may combine to limit the scope or accuracy of our impact analysis because such an analysis is future oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

For the purposes of this final rule, we compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2008 wage index and determined the hospice wage index to be budget neutral. Budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the FY 2008 wage index would equal estimated aggregate payments that would have been made for the same services if the 1983 wage index had remained in effect. Budget neutrality to 1983 does not imply that estimated payments would not increase since the budget neutrality applies only to the wage index portion and not the total payment rate, which accommodates inflation.

As discussed above, we use the latest claims file available to us to develop the impact table when we issue the annual yearly wage index update. For the purposes of this final rule, data were obtained from the National Claims History file using FY 2006 claims processed through June 2007, which was the most recent available data. We deleted bills from hospice providers that have since closed. For the purposes of this final rule, this file is adequate to demonstrate the impact of the FY 2008 wage index values and is not intended to project the anticipated expenditures for FY 2008. This impact analysis compares hospice payments using the FY 2007 hospice wage index to the estimated payments using the FY 2008 wage index. We note that estimated payments for FY 2008 are determined by using the wage index for FY 2008 and payment rates for FY 2007. We also note that the results in the impact analysis table (Table 1) in this final rule differ from the proposed rule, because we have incorporated the most recent data to determine the budget neutrality adjustment factor. As noted in previous sections, payment rates for FY 2008 are published through administrative issuance.

Table 1 demonstrates the results of our analysis. In column 1 we indicate the number of hospices included in our analysis. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 estimates payments using the FY 2007 wage index values and the FY 2007 payment rates. Column 4 estimates payments using FY 2008 wage index values as well as the FY 2007 payment rates. Column 5 compares columns 3 and 4 and shows the percentage change in estimated hospice payments based on the hospice category.

Table 1 also categorizes hospices by various geographic and provider characteristics. The first row displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 1,974 hospices located in urban areas and 982 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2006. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding. As indicated in Table 1 below, there are 2,956 hospices. Approximately 53 percent of Medicare-certified hospices are identified as voluntary, government, or other agencies and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that

approximately 79 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis. Furthermore, the wage index methodology was previously determined by consensus, through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large, and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and it was adopted into regulation in the August 8, 1997 final rule. In developing the process for updating the wage index in the 1997 final rule, we considered the impact of this methodology on small entities and attempted to mitigate any potential negative effects.

As stated previously, the following discussions are limited to demonstrating trends rather than projected dollars. We used the CBSA designations and wage indices as well as the data from FY 2006 claims processed through June 2007 in developing the impact analysis. For FY 2008, the wage index is the variable that differs between the FY 2007 payments and the FY 2008 estimated payments. FY 2007, payment rates are used for both FY 2007 actual payments and the FY 2008 estimated payments. The FY 2008 payment rates will be adjusted to reflect the full FY 2008 hospital market basket, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. As previously noted, we publish these rates through administrative issuances.

As discussed in the FY 2006 final rule (70 FR 45129), hospice agencies may use multiple wage indices to compute their payments based on potentially different geographic locations. For the purposes of this final rule, the location of the beneficiary is used for routine and continuous home care or the CBSA for the location of the hospice agency for respite and general inpatient care. As noted above, beginning January 1, 2008, the wage index utilized will be based on the location of the site of service. As the location of the beneficiary's home and the location of the facility may vary, there will still be variability in geographic location. We anticipate that the location of the various sites will correspond with the geographic location of the hospice and thus we will continue to use the location of the hospice for our analyses. For this analysis, we use payments to the hospice in the aggregate based on the location of the hospice. The impact of hospice wage index changes has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size.

Our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days. Most hospices are medium-sized followed by large hospices. Hospices are almost equal in numbers by ownership with 1,578 designated as non-profit and 1,378 as proprietary. The vast majority of hospices are freestanding.

1. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care (RHC) days representing over 70 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. As discussed in the August 4, 2005 final rule, we currently use three size designations to present the impact analyses. The three categories are: small agencies having 0 to 3,499 RHC days; medium agencies having 3,500 to 19,999 RHC days; and large agencies having 20,000 or more RHC days. Using RHC days as a proxy for size, our analysis indicates that the proposed FY 2008 wage index values are anticipated to have virtually no impact on hospice providers, with a slight increase of 0.1 percent anticipated for medium hospices while no change is anticipated for small or large hospices.

2. Geographic Location

Our analysis demonstrates that the proposed FY 2008 wage index values will result in little change in estimated payments with urban hospices anticipated to experience no change while rural hospices are anticipated to experience a slight increase of 0.3 percent. For urban hospices, the greatest increase of 0.9 percent is anticipated to be experienced by the Mountain regions, followed by an increase for East North Central of 0.7 percent and Pacific regions of 0.6 percent. The remaining urban regions are anticipated to experience a decrease ranging from 0.1 percent in the West North Central and Middle Atlantic regions to 0.6 percent in the East South Central region. The greatest decrease of 2.4 percent is anticipated for Puerto Rico.

For rural hospices, Puerto Rico is anticipated to experience no change. Two regions are anticipated to experience a decrease of 1.1 percent for New England and 0.3 percent for the mountain regions. The remaining regions are anticipated to experience an increase ranging from 0.1 percent for the South Atlantic region to 0.6 percent for the Middle Atlantic, East South Central and West North Central regions.

3. Type of Ownership

By type of ownership, non-profit hospices are anticipated to experience a slight increase of 0.1 percent in payment while government hospices are anticipated to experience a slight increase of 0.2 percent. No change is anticipated for proprietary hospices. Not specified hospices in the ''other'' category are anticipated to experience a slight decrease of 0.2 percent.

4. Hospice Base

No change in payment is anticipated for freestanding facilities. Home health, hospital, and skilled nursing facilities are anticipated to experience an increase of 0.1, 0.3, and 0.7 percent, respectively.

TABLE 1.—IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of Hospices	Number of Routine Home Care Days in Thousands	Payments using FY 2007 Wage Index in Thousands	Estimated Payments using FY 2008 CBSA Wage Index in Thousands	Percent Change in Hospice Payments
	(1)	(2)	(3)	(4)	(5)
ALL HOSPICES:	2956	61,125	9,148,694	9,151,554	0.0
URBAN HOSPICES	1974	52,426	8,048,410	8,048,224	0.0
RURAL HOSPICES	982	8,699	1,100,284	1,103,330	0.3
BY REGION—URBAN:					
NEW ENGLAND	112	1,772	313,059	311,816	−0.4

TABLE 1.—IMPACT OF HOSPICE WAGE INDEX CHANGE—Continued

	Number of Hospices (1)	Number of Routine Home Care Days in Thousands (2)	Payments using FY 2007 Wage Index in Thousands (3)	Estimated Payments using FY 2008 CBSA Wage Index in Thousands (4)	Percent Change in Hospice Payments (5)
MIDDLE ATLANTIC	198	5,211	843,068	842,000	−0.1
SOUTH ATLANTIC	285	11,385	1,839,567	1,831,476	−0.4
EAST NORTH CENTRAL	294	7,568	1,158,628	1,166,376	0.7
EAST SOUTH CENTRAL	157	4,333	586,642	583,333	−0.6
WEST NORTH CENTRAL	151	3,413	471,129	470,666	−0.1
WEST SOUTH CENTRAL	336	7,113	1,007,361	1,002,636	−0.5
MOUNTAIN	182	4,531	702,881	709,230	0.9
PACIFIC	225	6,302	1,054,910	1,061,223	0.6
PUERTO RICO	34	797	71,165	69,468	−2.4
BY REGION—RURAL:					
NEW ENGLAND	26	144	21,134	20,910	−1.1
MIDDLE ATLANTIC	43	408	52,441	52,765	0.6
SOUTH ATLANTIC	124	1,840	238,972	239,136	0.1
EAST NORTH CENTRAL	140	1,125	146,434	146,747	0.2
EAST SOUTH CENTRAL	142	1,982	240,058	241,528	0.6
WEST NORTH CENTRAL	188	944	120,343	121,061	0.6
WEST SOUTH CENTRAL	163	1,307	153,527	153,934	0.3
MOUNTAIN	103	576	74,972	74,718	−0.3
PACIFIC	52	365	51,809	51,936	0.2
PUERTO RICO	1	7	595	595	0.0
ROUTINE HOME CARE DAYS:					
0–3499 DAYS (small)	617	1,060	142,491	142,458	0.0
3500–19,999 DAYS (medium)	1429	14,208	1,994,694	1,996,162	0.1
20,000+ DAYS (large)	910	45,856	7,011,509	7,012,935	0.0
TYPE OF OWNERSHIP:					
VOLUNTARY	1220	27,555	4,270,787	4,274,723	0.1
PROPRIETARY	1378	30,166	4,380,444	4,379,751	0.0
GOVERNMENT	193	986	133,503	133,745	0.2
OTHER	165	2,417	363,960	363,335	−0.2
HOSPICE BASE:					
FREESTANDING	1767	45,209	6,752,227	6,750,239	0.0
HOME HEALTH AGENCY	620	9,105	1,369,110	1,370,605	0.1
HOSPITAL	555	6,606	994,451	997,560	0.3
SKILLED NURSING FACILITY	14	205	32,906	33,149	0.7

Note: FY 2007 payment rates were used for estimated payments for FY 2008. FY 2008 payment rates will be adjusted to reflect the full hospital market basket and will be promulgated through administrative issuance.

C. Conclusion

Our impact analysis compared the FY 2007 wage index to the estimated payments using the FY 2008 wage index. Through the analysis, we estimate that total hospice payments, based on the FY 2008 wage index values, will effectively be budget neutral with an estimated increase from FY 2007 of $2,860,000. As discussed, the budget neutrality adjustment factor is determined by using the pre-floor, pre-reclassified hospital wage data. The impact analysis compares the wage index values, which have had either the budget neutrality adjustment factor or the hospice floor applied. Additionally, we compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2008 wage index and determined the current hospice wage index to be budget neutral, as required by the negotiated rulemaking committee. As noted above, the payment rates used reflect the FY 2007 rates. The FY 2008 payment rates will be adjusted to reflect the full FY 2008 hospital market basket, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. We publish these rates through administrative issuances.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects for 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provision and Definitions

■ 2. Section 418.3 is amended by revising paragraph (1)(ii) in the definition of ''attending physician'' to read as follows:

§ 418.3 Definitions.

* * * * *

(1) * * *

(ii) Nurse practitioner who meets the training, education, and experience requirements as described in § 410.75 (b) of this chapter.

* * * * *

Subpart G—Payment for Hospice Care

■ 3. Section 418.302 is amended by revising paragraph (g) to read as follows:

§ 418.302 Payment procedures for hospice care.

* * * * *

(g) Payment for routine home care, continuous home care, general inpatient care and inpatient respite care is made on the basis of the geographic location where the services are provided.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 19, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 17, 2007.

Michael O. Leavitt,

Secretary.

BILLING CODE 4120–01–P

Note: The following Addendum will not appear in the Code of Federal Regulations.

ADDENDUM

TABLE A--HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
10180	Abilene, TX Callahan, TX Jones, TX Taylor, TX	0.8533
10380	Aguadilla-Isabela-San Sebastián, PR Aguada, PR Aguadilla, PR Moca, PR Isabela, PR Lares, PR Rincón, PR San Sebastián, PR Anasco, PR	0.4502
10420	Akron, OH Portage, OH Summit, OH	0.9231
10500	Albany, GA Dougherty, GA Lee, GA Baker, GA Terrell, GA Worth, GA	0.9590
10580	Albany-Schenectady-Troy, NY Albany, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.9301
10740	Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM Torrance, NM	1.0089
10780	Alexandria, LA Rapides, LA Grant, LA	0.8540

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
10900	Allentown-Bethlehem-Easton, PA-NJ Carbon, PA Lehigh, PA Northampton, PA Warren, NJ	1.0610
11020	Altoona, PA Blair, PA	0.9400
11100	Amarillo, TX Potter, TX Randall, TX Armstrong, TX Carson, TX	0.9780
11180	Ames, IA Story, IA	1.0411
11260	Anchorage, AK Anchorage, AK Matanuska-Susitna, AK	1.2825
11300	Anderson, IN Madison, IN	0.9260
11340	Anderson, SC Anderson, SC	0.9618
11460	Ann Arbor, MI Washtenaw, MI	1.1548
11500	Anniston-Oxford, AL Calhoun, AL	0.8288
11540	Appleton, WI Calumet, WI Outagamie, WI	1.0085
11700	Asheville, NC Buncombe, NC Madison, NC Haywood, NC Henderson, NC	0.9830
12020	Athens-Clarke County, GA Clarke, GA Madison, GA Oconee, GA Oglethorpe, GA	1.0513

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
12060	Atlanta-Sandy Springs-Marietta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA De Kalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA Butts, GA Dawson, GA Haralson, GA Heard, GA Jasper, GA Lamar, GA Meriwether, GA Pike, GA	1.0413
12100	Atlantic City, NJ Atlantic, NJ	1.2620
12220	Auburn-Opelika, AL Lee, AL	0.8636
12260	Augusta-Richmond County, GA-SC Aiken, SC Columbia, GA Edgefield, SC McDuffie, GA Richmond, GA Burke, GA	1.0312

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
12420	Austin-Round Rock, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9967
12540	Bakersfield, CA Kern, CA	1.1440
12580	Baltimore-Towson, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	1.0761
12620	Bangor, ME Penobscot, ME	1.0358
12700	Barnstable Town, MA Barnstable, MA	1.3375
12940	Baton Rouge, LA Ascension, LA East Baton Rouge Parish, LA Livingston, LA West Baton Rouge Parish, LA East Feliciana, LA Iberville, LA Pointe Coupee, LA St. Helena, LA West Feliciana, LA	0.8623
12980	Battle Creek, MI Calhoun, MI	1.0413
13020	Bay City, MI Bay, MI	0.9868
13140	Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.9168
13380	Bellingham, WA Whatcom, WA	1.1844
13460	Bend, OR Deschutes, OR	1.1459

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
13644	Bethesda-Gaithersburg-Frederick, MD Frederick, MD Montgomery, MD	1.1630
13740	Billings, MT Carbon, MT Yellowstone, MT	0.9293
13780	Binghamton, NY Broome, NY Tioga, NY	0.9372
13820	Birmingham-Hoover, AL Blount, AL Jefferson, AL Shelby, AL St. Clair, AL Bibb, AL Chilton, AL Walker, AL	0.9487
13900	Bismarck, ND Burleigh, ND Morton, ND	0.8000
13980	Blacksburg-Christiansburg-Radford, VA Giles, VA Montgomery, VA Pulaski, VA Radford City, VA	0.8761
14020	Bloomington, IN Greene, IN Owen, IN Monroe, IN	0.9102
14060	Bloomington-Normal, IL McLean, IL	0.9540
14260	Boise City-Nampa, ID Ada, ID Canyon, ID Boise, ID Gem, ID Owyhee, ID	1.0028
14484	Boston-Quincy, MA Norfolk, MA Plymouth, MA Suffolk, MA	1.2458
14500	Boulder, CO Boulder, CO	1.1040

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
14540	Bowling Green, KY Edmonson, KY Warren, KY	0.8691
14740	Bremerton-Silverdale, WA Kitsap, WA	1.1641
14860	Bridgeport-Stamford-Norwalk, CT Fairfield, CT	1.3503
15180	Brownsville-Harlingen, TX Cameron, TX	1.0059
15260	Brunswick, GA Brantley, GA Glynn, GA McIntosh, GA	1.0842
15380	Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	1.0052
15500	Burlington, NC Alamance, NC	0.9252
15540	Burlington-South Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0106
15764	Cambridge-Newton-Framingham, MA Middlesex, MA	1.1701
15804	Camden, NJ Burlington, NJ Camden, NJ Gloucester, NJ	1.1085
15940	Canton-Massillon, OH Carroll, OH Stark, OH	0.9633
15980	Cape Coral-Fort Myers, FL Lee, FL	0.9965
16180	Carson City, NV Carson City, NV	1.0693
16220	Casper, WY Natrona, WY	0.9755
16300	Cedar Rapids, IA Linn, IA Benton, IA Jones, IA	0.9481

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
16580	Champaign-Urbana, IL	1.0287
	Champaign, IL	
	Ford, IL	
	Piatt, IL	
16620	Charleston, WV	0.9112
	Kanawha, WV	
	Putnam, WV	
	Boone, WV	
	Clay, WV	
	Lincoln, WV	
16700	Charleston-North Charleston, SC	0.9755
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	1.0191
	Cabarrus, NC	
	Gaston, NC	
	Mecklenburg, NC	
	Union, NC	
	York, SC	
	Anson, NC	
16820	Charlottesville, VA	1.0800
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
	Nelson, VA	
16860	Chattanooga, TN-GA	0.9545
	Catoosa, GA	
	Dade, GA	
	Hamilton, TN	
	Marion, TN	
	Walker, GA	
	Sequatchie, TN	
16940	Cheyenne, WY	0.9664
	Laramie, WY	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
16974	Chicago-Naperville-Joliet, IL	1.1468
	Cook, IL	
	De Kalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	McHenry, IL	
	Will, IL	
17020	Chico, CA	1.1790
	Butte, CA	
17140	Cincinnati-Middletown, OH-KY-IN	1.0241
	Boone, KY	
	Brown, OH	
	Campbell, KY	
	Clermont, OH	
	Dearborn, IN	
	Gallatin, KY	
	Grant, KY	
	Hamilton, OH	
	Kenton, KY	
	Ohio, IN	
	Pendleton, KY	
	Warren, OH	
	Franklin, IN	
	Bracken, KY	
	Butler, OH	
17300	Clarksville, TN-KY	0.8998
	Christian, KY	
	Montgomery, TN	
	Stewart, TN	
	Trigg, KY	
17420	Cleveland, TN	0.8650
	Bradley, TN	
	Polk, TN	
17460	Cleveland-Elyria-Mentor, OH	1.0027
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
17660	Coeur d'Alene, ID	0.9967
	Kootenai, ID	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
17780	College Station-Bryan, TX Brazos, TX Burleson, TX Robertson, TX	0.9648
17820	Colorado Springs, CO El Paso, CO Teller, CO	1.0348
17860	Columbia, MO Boone, MO Howard, MO	0.9112
17900	Columbia, SC Lexington, SC Richland, SC Calhoun, SC Fairfield, SC Kershaw, SC Saluda, SC	0.9529
17980	Columbus, GA-AL Chattahoochee, GA Harris, GA Muscogee, GA Russell, AL Marion, GA	0.8788
18020	Columbus, IN Bartholomew, IN	0.9939
18140	Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH Morrow, OH Union, OH	1.0781
18580	Corpus Christi, TX Nueces, TX San Patricio, TX Aransas, TX	0.9135
18700	Corvallis, OR Benton, OR	1.2316
19060	Cumberland, MD-WV Allegany, MD Mineral, WV	0.9009

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
19124	Dallas-Plano-Irving, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Hunt, TX Kaufman, TX Rockwall, TX Delta, TX	1.0747
19140	Dalton, GA Murray, GA Whitfield, GA	0.9699
19180	Danville, IL Vermilion, IL	0.9884
19260	Danville, VA Danville City, VA Pittsylvania, VA	0.9014
19340	Davenport-Moline-Rock Island, IA-IL Henry, IL Rock Island, IL Scott, IA Mercer, IL	0.9436
19380	Dayton, OH Greene, OH Miami, OH Montgomery, OH Preble, OH	0.9640
19460	Decatur, AL Lawrence, AL Morgan, AL	0.8703
19500	Decatur, IL Macon, IL	0.8717
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia, FL	0.9881

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
19740	Denver-Aurora, CO Adams, CO Arapahoe, CO Broomfield, CO Denver, CO Douglas, CO Jefferson, CO Clear Creek, CO Elbert, CO Gilpin, CO Park, CO	1.1659
19780	Des Moines-West Des Moines, IA Dallas, IA Polk, IA Warren, IA Guthrie, IA Madison, IA	0.9828
19804	Detroit-Livonia-Dearborn, MI Wayne, MI	1.0966
20020	Dothan, AL Geneva, AL Henry, AL Houston, AL	0.8000
20100	Dover, DE Kent, DE	1.0504
20220	Dubuque, IA Dubuque, IA	0.9742
20260	Duluth, MN-WI Douglas, WI St. Louis, MN Carlton, MN	1.0712
20500	Durham, NC Chatham, NC Durham, NC Orange, NC Person, NC	1.0481
20740	Eau Claire, WI Chippewa, WI Eau Claire, WI	1.0272
20764	Edison, NJ Middlesex, NJ Somerset, NJ Monmouth, NJ Ocean, NJ	1.1936

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
20940	El Centro, CA Imperial, CA	0.9681
21060	Elizabethtown, KY Hardin, KY Larue, KY	0.9277
21140	Elkhart-Goshen, IN Elkhart, IN	1.0054
21300	Elmira, NY Chemung, NY	0.8789
21340	El Paso, TX El Paso, TX	0.9657
21500	Erie, PA Erie, PA	0.9416
21604	Essex County, MA Essex, MA	1.1113
21660	Eugene-Springfield, OR Lane, OR	1.1601
21780	Evansville, IN-KY Gibson, IN Henderson, KY Posey, IN Vanderburgh, IN Warrick, IN Webster, KY	0.9676
21820	Fairbanks, AK Fairbanks North Star, AK	1.1796
21940	Fajardo, PR Ceiba, PR Fajardo, PR Luquillo, PR	0.4641
22020	Fargo, ND-MN Cass, ND Clay, MN	0.8800
22140	Farmington, NM San Juan, NM	0.9162
22180	Fayetteville, NC Cumberland, NC Hoke, NC	0.9541
22220	Fayetteville-Springdale-Rogers, AR-MO Benton, AR Washington, AR Madison, AR McDonald, MO	0.9456

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
22380	Flagstaff, AZ Coconino, AZ	1.2374
22420	Flint, MI Genesee, MI	1.1700
22500	Florence, SC Darlington, SC Florence, SC	0.8947
22520	Florence-Muscle Shoals, AL Colbert, AL Lauderdale, AL	0.8366
22540	Fond Du Lac, WI Fond Du Lac, WI	1.0734
22660	Fort Collins-Loveland, CO Larimer, CO	1.0180
22744	Ft Lauderdale-Pompano Beach-Deerfield Beach, FL Broward, FL	1.0809
22900	Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK Franklin, AR Le Flore, OK	0.8246
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa, FL	0.9219
23060	Fort Wayne, IN Allen, IN Wells, IN Whitley, IN	1.0152
23104	Fort Worth-Arlington, TX Johnson, TX Parker, TX Tarrant, TX Wise, TX	1.0207
23420	Fresno, CA Fresno, CA	1.1673
23460	Gadsden, AL Etowah, AL	0.8604
23540	Gainesville, FL Alachua, FL Gilchrist, FL	0.9896
23580	Gainesville, GA Hall, GA	0.9555

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
23844	Gary, IN Lake, IN Porter, IN Jasper, IN Newton, IN	0.9956
24020	Glens Falls, NY Warren, NY Washington, NY	0.8879
24140	Goldsboro, NC Wayne, NC	0.9782
24220	Grand Forks, ND-MN Grand Forks, ND Polk, MN	0.8479
24300	Grand Junction, CO Mesa, CO	1.0313
24340	Grand Rapids-Wyoming, MI Kent, MI Barry, MI Ionia, MI Newaygo, MI	1.0085
24500	Great Falls, MT Cascade, MT	0.9171
24540	Greeley, CO Weld, CO	1.0242
24580	Green Bay, WI Brown, WI Kewaunee, WI Oconto, WI	1.0440
24660	Greensboro-High Point, NC Guilford, NC Randolph, NC Rockingham, NC	0.9457
24780	Greenville, NC Pitt, NC Greene, NC	1.0061
24860	Greenville, SC Greenville, SC Pickens, SC Laurens, SC	1.0458
25020	Guayama, PR Arroyo, PR Guayama, PR Patillas, PR	0.3720

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
25060	Gulfport-Biloxi, MS	0.9509
	Hancock, MS	
	Harrison, MS	
	Stone, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.9641
	Washington, MD	
	Morgan, WV	
	Berkeley, WV	
25260	Hanford-Corcoran, CA	1.0968
	Kings, CA	
25420	Harrisburg-Carlisle, PA	1.0029
	Cumberland, PA	
	Dauphin, PA	
	Perry, PA	
25500	Harrisonburg, VA	0.9678
	Harrisonburg City, VA	
	Rockingham, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.1620
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
25620	Hattiesburg, MS	0.8000
	Forrest, MS	
	Lamar, MS	
	Perry, MS	
25860	Hickory-Lenoir-Morganton, NC	0.9611
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
25980	Hinesville-Fort Stewart, GA	0.9790
	Liberty, GA	
	Long, GA	
26100	Holland-Grand Haven, MI	0.9774
	Ottawa, MI	
26180	Honolulu, HI	1.1836
	Honolulu, HI	
26300	Hot Springs, AR	0.9368
	Garland, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.8621
	Lafourche, LA	
	Terrebonne, LA	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
26420	Houston-Sugar Land-Baytown, TX	1.0675
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
	Austin, TX	
	San Jacinto, TX	
	Brazoria, TX	
	Galveston, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9597
	Boyd, KY	
	Cabell, WV	
	Greenup, KY	
	Lawrence, OH	
	Wayne, WV	
26620	Huntsville, AL	0.9608
	Limestone, AL	
	Madison, AL	
26820	Idaho Falls, ID	0.9694
	Bonneville, ID	
	Jefferson, ID	
26900	Indianapolis-Carmel, IN	1.0555
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
	Brown, IN	
	Putnam, IN	
26980	Iowa City, IA	1.0362
	Johnson, IA	
	Washington, IA	
27060	Ithaca, NY	1.0590
	Tompkins, NY	
27100	Jackson, MI	1.0197
	Jackson, MI	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
27140	Jackson, MS Hinds, MS Madison, MS Rankin, MS Copiah, MS Simpson, MS	0.8822
27180	Jackson, TN Chester, TN Madison, TN	0.9443
27260	Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL Baker, FL	0.9776
27340	Jacksonville, NC Onslow, NC	0.8780
27500	Janesville, WI Rock, WI	1.0299
27620	Jefferson City, MO Callaway, MO Cole, MO Moniteau, MO Osage, MO	0.8888
27740	Johnson City, TN Carter, TN Unicoi, TN Washington, TN	0.8579
27780	Johnstown, PA Cambria, PA	0.9195
27860	Jonesboro, AR Craighead, AR Poinsett, AR	0.8173
27900	Joplin, MO Jasper, MO Newton, MO	0.9179
28020	Kalamazoo-Portage, MI Kalamazoo, MI Van Buren, MI	1.1418
28100	Kankakee-Bradley, IL Kankakee, IL	1.0755

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
28140	Kansas City, MO-KS Cass, MO Clay, MO Clinton, MO Jackson, MO Johnson, KS Lafayette, MO Leavenworth, KS Miami, KS Platte, MO Ray, MO Wyandotte, KS Franklin, KS Linn, KS Bates, MO Caldwell, MO	1.0128
28420	Kennewick-Richland-Pasco, WA Benton, WA Franklin, WA	1.1033
28660	Killeen-Temple-Fort Hood, TX Bell, TX Coryell, TX Lampasas, TX	0.9494
28700	Kingsport-Bristol-Bristol, TN-VA Bristol City, VA Hawkins, TN Scott, VA Sullivan, TN Washington, VA	0.8517
28740	Kingston, NY Ulster, NY	0.9992
28940	Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Union, TN	0.8799
29020	Kokomo, IN Howard, IN Tipton, IN	1.0314
29100	La Crosse, WI-MN Houston, MN La Crosse, WI	1.0054

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
29140	Lafayette, IN Benton, IN Carroll, IN Tippecanoe, IN	0.9526
29180	Lafayette, LA Lafayette, LA St. Martin, LA	0.8842
29340	Lake Charles, LA Calcasieu, LA Cameron, LA	0.8442
29404	Lake County-Kenosha County, IL-WI Lake, IL Kenosha, WI	1.1275
29460	Lakeland, FL Polk, FL	0.9471
29540	Lancaster, PA Lancaster, PA	1.0228
29620	Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	1.0761
29700	Laredo, TX Webb, TX	0.8332
29740	Las Cruces, NM Dona Ana, NM	0.9891
29820	Las Vegas-Paradise, NV Clark, NV	1.2192
29940	Charleston-North Charleston, SC Berkeley, SC Charleston, SC Lawrence, KS Douglas, KS	0.8923
30020	Lawton, OK Comanche, OK	0.8603
30140	Lebanon, PA Lebanon, PA	0.9258
30300	Lewiston, ID-WA Nez Perce, ID Asotin, WA	1.0510
30340	Lewiston-Auburn, ME Androscoggin, ME	0.9734

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
30460	Lexington-Fayette, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Scott, KY Woodford, KY	0.9793
30620	Lima, OH Allen, OH	0.9645
30700	Lincoln, NE Lancaster, NE Seward, NE	1.0765
30780	Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR Grant, AR Perry, AR	0.9483
30860	Logan, UT-ID Cache, UT Franklin, ID	0.9624
30980	Longview, TX Gregg, TX Upshur, TX Rusk, TX	0.9374
31020	Longview, WA Cowlitz, WA	1.0678
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles, CA	1.2544
31140	Louisville, KY-IN Bullitt, KY Clark, IN Floyd, IN Harrison, IN Jefferson, KY Oldham, KY Washington, IN Henry, KY Meade, KY Nelson, KY Shelby, KY Spencer, KY Trimble, KY	0.9726

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
31180	Lubbock, TX	0.9187
	Lubbock, TX	
	Crosby, TX	
31340	Lynchburg, VA	0.9274
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
	Appomattox, VA	
31420	Macon, GA	1.0154
	Bibb, GA	
	Jones, GA	
	Twiggs, GA	
	Crawford, GA	
	Monroe, GA	
31460	Madera, CA	0.8698
	Madera, CA	
31540	Madison, WI	1.1563
	Dane, WI	
	Columbia, WI	
	Iowa, WI	
31700	Manchester-Nashua, NH	1.0926
	Hillsborough, NH	
	Merrimack, NH	
31900	Mansfield, OH	0.9889
	Richland, OH	
32420	Mayagüez, PR	0.4425
	Hormigueros, PR	
	Mayagüez, PR	
32580	McAllen-Edinburg-Pharr, TX	0.9358
	Hidalgo, TX	
32780	Medford, OR	1.1539
	Jackson, OR	
32820	Memphis, TN-MS-AR	0.9998
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
	Marshall, MS	
	Tate, MS	
	Tunica, MS	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
32900	Merced, CA	1.2236
	Merced, CA	
33124	Miami-Miami Beach-Kendall, FL	1.0466
	Miami-Dade, FL	
33140	Michigan City-La Porte, IN	0.9726
	La Porte, IN	
33260	Midland, TX	1.0438
	Midland, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0899
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1676
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Pierce, WI	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	St. Croix, WI	
	Washington, MN	
	Wright, MN	
33540	Missoula, MT	0.9523
	Missoula, MT	
33660	Mobile, AL	0.8441
	Mobile, AL	
33700	Modesto, CA	1.2511
	Stanislaus, CA	
33740	Monroe, LA	0.8530
	Ouachita, LA	
	Union, LA	
33780	Monroe, MI	1.0354
	Monroe, MI	
33860	Montgomery, AL	0.8543
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
	Lowndes, AL	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
34060	Morgantown, WV Monongalia, WV Preston, WV	0.8985
34100	Morristown, TN Grainger, TN Hamblen, TN Jefferson, TN	0.8462
34580	Mount Vernon-Anacortes, WA Skagit, WA	1.1218
34620	Muncie, IN Delaware, IN	0.9133
34740	Muskegon-Norton Shores, MI Muskegon, MI	1.0604
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry, SC	0.9397
34900	Napa, CA Napa, CA	1.4266
34940	Naples-Marco Island, FL Collier, FL	1.0604
34980	Nashville-Davidson-Murfreesboro, TN Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford, TN Sumner, TN Williamson, TN Wilson, TN Cannon, TN Hickman, TN Macon, TN Smith, TN Trousdale, TN	1.0504
35004	Nassau-Suffolk, NY Nassau, NY Suffolk, NY	1.3506
35084	Newark-Union, NJ-PA Pike, PA Essex, NJ Morris, NJ Sussex, NJ Union, NJ Hunterdon, NJ	1.2685

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
35300	New Haven-Milford, CT New Haven, CT	1.2750
35380	New Orleans-Metairie-Kenner, LA Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. John Baptist, LA St. Tammany, LA	0.9420
35644	New York-White Plains-Wayne, NY-NJ Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY Bergen, NJ Passaic, NJ Hudson, NJ	1.4056
35660	Niles-Benton Harbor, MI Berrien, MI	0.9509
35980	Norwich-New London, CT New London, CT	1.2728
36084	Oakland-Fremont-Hayward, CA Alameda, CA Contra Costa, CA	1.6874
36100	Ocala, FL Marion, FL	0.9458
36140	Ocean City, NJ Cape May, NJ	1.1170
36220	Odessa, TX Ector, TX	1.0745
36260	Ogden-Clearfield, UT Davis, UT Weber, UT Morgan, UT	0.9595

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
36420	Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Grady, OK Lincoln, OK	0.9433
36500	Olympia, WA Thurston, WA	1.1820
36540	Omaha-Council Bluffs, NE-IA Cass, NE Douglas, NE Pottawattamie, IA Sarpy, NE Washington, NE Harrison, IA Mills, IA Saunders, NE	1.0080
36740	Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	1.0082
36780	Oshkosh-Neenah, WI Winnebago, WI	0.9936
36980	Owensboro, KY Daviess, KY Hancock, KY Mc Lean, KY	0.9331
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura, CA	1.2316
37340	Palm Bay-Melbourne-Titusville, FL Brevard, FL	1.0073
37460	Panama City-Lynn Haven, FL Bay, FL	0.8562
37620	Parkersburg-Marietta, WV-OH Pleasants, WV Wirt, WV Washington, OH Wood, WV	0.8509
37700	Pascagoula, MS George, MS Jackson, MS	0.8763

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
37860	Pensacola-Ferry Pass-Brent, FL Escambia, FL Santa Rosa, FL	0.8533
37900	Peoria, IL Peoria, IL Tazewell, IL Woodford, IL Marshall, IL Stark, IL	0.9581
37964	Philadelphia, PA Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.1729
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa, AZ Pinal, AZ	1.0973
38220	Pine Bluff, AR Jefferson, AR Cleveland, AR Lincoln, AR	0.8942
38300	Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA Armstrong, PA	0.9252
38340	Pittsfield, MA Berkshire, MA	1.0950
38540	Pocatello, ID Bannock, ID Power, ID	1.0027
38660	Ponce, PR Juana Diaz, PR Ponce, PR Villalba, PR	0.5568
38860	Portland-South Portland-Biddeford, ME Cumberland, ME Sagadahoc, ME York, ME	1.0569

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas, OR Clark, WA Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Skamania, WA	1.2177
38940	Port St. Lucie-Fort Pierce, FL Martin, FL St. Lucie, FL	1.0489
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess, NY Orange, NY	1.1638
39140	Prescott, AZ Yavapai, AZ	1.0492
39300	Providence-New Bedford-Fall River, RI-MA Bristol, MA Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.1502
39340	Provo-Orem, UT Utah, UT Juab, UT	1.0173
39380	Pueblo, CO Pueblo, CO	0.9337
39460	Punta Gorda, FL Charlotte, FL	1.0032
39540	Racine, WI Racine, WI	0.9980
39580	Raleigh-Cary, NC Franklin, NC Johnston, NC Wake, NC	1.0522
39660	Rapid City, SD Pennington, SD Meade, SD	0.9422
39740	Reading, PA Berks, PA	1.0264
39820	Redding, CA Shasta, CA	1.4078

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
39900	Reno-Sparks, NV Washoe, NV Storey, NV	1.2761
40060	Richmond, VA Charles City, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA Amelia, VA Caroline, VA Cumberland, VA King and Queen, VA King William, VA Louisa, VA Sussex, VA	0.9789
40140	Riverside-San Bernardino-Ontario, CA Riverside, CA San Bernardino, CA	1.1631
40220	Roanoke, VA Craig, VA Franklin, VA Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.9224
40340	Rochester, MN Olmsted, MN Dodge, MN Wabasha, MN	1.2169
40380	Rochester, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9594

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
40420	Rockford, IL Boone, IL Winnebago, IL	1.0655
40484	Rockingham County-Strafford County, NH Rockingham, NH Strafford, NH	1.0836
40580	Rocky Mount, NC Edgecombe, NC Nash, NC	0.9444
40660	Rome, GA Floyd, GA	0.9806
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado, CA Placer, CA Sacramento, CA Yolo, CA	1.4264
40980	Saginaw-Saginaw Township North, MI Saginaw, MI	0.9466
41060	St. Cloud, MN Benton, MN Stearns, MN	1.1053
41100	St. George, UT Washington, UT	0.9883
41140	St. Joseph, MO-KS Andrew, MO Buchanan, MO Doniphan, KS De Kalb, MO	1.0793

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
41180	St. Louis, MO-IL Clinton, IL Franklin, MO Jefferson, MO Jersey, IL Lincoln, MO Madison, IL Monroe, IL St. Charles, MO St. Clair, IL St. Louis, MO St. Louis City, MO Warren, MO Bond, IL Calhoun, IL Macoupin, IL Crawford, MO Washington, MO	0.9605
41420	Salem, OR Marion, OR Polk, OR	1.1134
41500	Salinas, CA Monterey, CA	1.5293
41540	Salisbury, MD Somerset, MD Wicomico, MD	0.9550
41620	Salt Lake City, UT Salt Lake, UT Summit, UT Tooele, UT	1.0029
41660	San Angelo, TX Irion, TX Tom Green, TX	0.8920
41700	San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX Wilson, TX Atascosa, TX Bandera, TX Kendall, TX Medina, TX	0.9434
41740	San Diego-Carlsbad-San Marcos, CA San Diego, CA	1.2111

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
41780	Sandusky, OH Erie, OH	0.9922
41884	San Francisco-San Mateo-Redwood City, CA Marin, CA San Francisco, CA San Mateo, CA	1.6176
41900	San Germán-Cabo Rojo, PR Lajas, PR Cabo Rojo, PR Sabana Grande, PR San Germán, PR	0.5618
41940	San Jose-Sunnyvale-Santa Clara, CA Santa Clara, CA San Benito, CA	1.6579
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas, PR Barceloneta, PR Bayamón, PR Canóvanas, PR Carolina, PR Cataño, PR Comerio, PR Corozal, PR Dorado, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Las Piedras, PR Loiza, PR Naguabo, PR Manatí, PR Morovis, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR. Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR Aibonito, PR Barranquitas, PR Ciales, PR	0.5120

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
	Maunabo, PR Orocovis, PR Quebradillas, PR Arecibo, PR Camuy, PR Hatillo, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo, CA	1.2371
42044	Santa Ana-Anaheim-Irvine, CA Orange, CA	1.2238
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara, CA	1.1830
42100	Santa Cruz-Watsonville, CA Santa Cruz, CA	1.6488
42140	Santa Fe, NM Santa Fe, NM	1.1546
42220	Santa Rosa-Petaluma, CA Sonoma, CA	1.5428
42260	Sarasota-Bradenton-Venice, FL Manatee, FL Sarasota, FL	1.0526
42340	Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9974
42540	Scranton--Wilkes-Barre, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8904
42644	Seattle-Bellevue-Everett, WA King, WA Snohomish, WA	1.2196
42680	Sebastian-Vero Beach, FL Indian River County, FL	1.0211
43100	Sheboygan, WI Sheboygan, WI	0.9628
43300	Sherman-Denison, TX Grayson, TX	0.9069

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
43340	Shreveport-Bossier City, LA Bossier, LA Caddo, LA De Soto, LA	0.9456
43580	Sioux City, IA-NE-SD Dixon, NE Dakota, NE Woodbury, IA Union, SD	0.9813
43620	Sioux Falls, SD Lincoln, SD Minnehaha, SD McCook, SD Turner, SD	1.0196
43780	South Bend-Mishawaka, IN-MI St. Joseph, IN Cass, MI	1.0498
43900	Spartanburg, SC Spartanburg, SC	0.9786
44060	Spokane, WA Spokane, WA	1.1144
44100	Springfield, IL Menard, IL Sangamon, IL	0.9483
44140	Springfield, MA Charleston-North Charleston, SC Berkeley, SC Charleston, SC Franklin, MA Hampden, MA Hampshire, MA	1.0751
44180	Springfield, MO Christian, MO Greene, MO Webster, MO Dallas, MO Polk, MO	0.9034
44220	Springfield, OH Clark, OH	0.9166
44300	State College, PA Centre, PA	0.9370
44700	Stockton, CA San Joaquin, CA	1.2205

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
44940	Sumter, SC Sumter, SC	0.8622
45060	Syracuse, NY Madison, NY Onondaga, NY Oswego, NY	1.0337
45104	Tacoma, WA Pierce, WA	1.1508
45220	Tallahassee, FL Gadsden, FL Leon, FL Wakulla, FL Jefferson, FL	0.9538
45300	Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9754
45460	Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN Sullivan, IN	0.9349
45500	Texarkana, TX-Texarkana, AR Bowie, TX Miller, AR	0.8644
45780	Toledo, OH Fulton, OH Lucas, OH Wood, OH Ottawa, OH	1.0225
45820	Topeka, KS Shawnee, KS Jackson, KS Jefferson, KS Osage, KS Wabaunsee, KS	0.9312
45940	Trenton-Ewing, NJ Mercer, NJ	1.1557
46060	Tucson, AZ Pima County, AZ	0.9816

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
46140	Tulsa, OK	0.8643
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
	Okmulgee, OK	
	Pawnee, OK	
46220	Tuscaloosa, AL	0.9112
	Tuscaloosa, AL	
	Greene, AL	
	Hale, AL	
46340	Tyler, TX	0.9398
	Smith, TX	
46540	Utica-Rome, NY	0.8956
	Herkimer, NY	
	Oneida, NY	
46660	Valdosta, GA	0.8927
	Brooks, GA	
	Echols, GA	
	Lanier, GA	
	Lowndes, GA	
46700	Vallejo-Fairfield, CA	1.6146
	Solano, CA	
47020	Victoria, TX	0.9131
	Victoria, TX	
	Calhoun, TX	
	Goliad, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0488
	Cumberland, NJ	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
47260	Virginia Beach-Norfolk-Newport News, VA	0.9376
	Chesapeake City, VA	
	Currituck, NC	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
	Surry, VA	
47300	Visalia-Porterville, CA	1.0633
	Tulare, CA	
47380	Waco, TX	0.9209
	McLennan, TX	
47580	Warner Robins, GA	0.8939
	Houston, GA	
47644	Warren-Farmington Hills-Troy, MI	1.0724
	Lapeer, MI	
	Macomb, MI	
	Oakland, MI	
	St. Clair, MI	
	Livingston, MI	

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV Alexandria City, VA Arlington, VA Calvert, MD Charles, MD Clarke, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA Jefferson, WV Loudoun, VA Manassas City, VA Manassas Park city, VA Prince Georges, MD Prince William, VA Spotsylvania, VA Stafford, VA District of Columbia, DC Warren, VA	1.1791
47940	Waterloo-Cedar Falls, IA Black Hawk, IA Bremer, IA Grundy, IA	0.8969
48140	Wausau, WI Marathon, WI	1.0370
48260	Weirton-Steubenville, WV-OH Brooke, WV Hancock, WV Jefferson, OH	0.8601
48300	Wenatchee, WA Chelan, WA Douglas, WA	1.1036
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach, FL	1.0292
48540	Wheeling, WV-OH Belmont, OH Marshall, WV Ohio, WV	0.8000

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
48620	Wichita, KS Butler, KS Harvey, KS Sedgwick, KS Sumner, KS	0.9667
48660	Wichita Falls, TX Archer, TX Wichita, TX Clay, TX	0.8865
48700	Williamsport, PA Lycoming, PA	0.8682
48864	Wilmington, DE-MD-NJ Cecil, MD New Castle, DE Salem, NJ	1.1396
48900	Wilmington, NC Brunswick, NC New Hanover, NC Pender, NC	1.0491
49020	Winchester, VA-WV Frederick, VA Winchester City, VA Hampshire, WV	1.0764
49180	Winston-Salem, NC Davie, NC Forsyth, NC Stokes, NC Yadkin, NC	0.9894
49340	Worcester, MA Worcester, MA	1.1437
49420	Yakima, WA Yakima, WA	1.0504
49500	Yauco, PR Guánica, PR Guayanilla, PR Peñuelas, PR Yauco, PR	0.4432
49620	York-Hanover, PA York, PA	1.0024
49660	Youngstown-Warren-Boardman, OH-PA Mahoning, OH Trumbull, OH Mercer, PA	0.9389

CBSA Code	Urban Area (Constituent Counties or County Equivalents) [2]	Wage Index[1]
49700	Yuba City, CA Sutter, CA Yuba, CA	1.1445
49740	Yuma, AZ Yuma, AZ	0.9716

[1] Wage index values are based on FY 2003 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or a budget neutrality adjustment calculated by multiplying the hospital wage index value for a given area by the budget neutrality factor. We have completed all of these adjustments and included them in the wage index values reflected in this table.

[2] This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this Table are considered to be rural areas. Wage Index values for these areas are found in Table B.

TABLE B--HOSPICE WAGE INDEX FOR RURAL AREAS

CBSA Code Number	Nonurban Area	Wage Index[3]
1	Alabama	0.8097
2	Alaska	1.1372
3	Arizona	0.9502
4	Arkansas	0.8000
5	California	1.2218
6	Colorado	0.9947
7	Connecticut	1.2490
8	Delaware	1.0352
10	Florida	0.9167
11	Georgia	0.8099
12	Hawaii	1.1145
13	Idaho	0.8661
14	Illinois	0.8875
15	Indiana	0.9107
16	Iowa	0.9260
17	Kansas	0.8531
18	Kentucky	0.8286
19	Louisiana	0.8000
20	Maine	0.9006
21	Maryland	0.9521
22	Massachusetts[5]	1.2438
23	Michigan	0.9666
24	Minnesota	0.9763
25	Mississippi	0.8254
26	Missouri	0.8456
27	Montana	0.9163
28	Nebraska	0.9256
29	Nevada	0.9540
30	New Hampshire	1.1577
31	New Jersey[4]	--------
32	New Mexico	0.8888
33	New York	0.8781
34	North Carolina	0.9161
35	North Dakota	0.8000
36	Ohio	0.9235
37	Oklahoma	0.8138

CBSA Code Number	Nonurban Area	Wage Index[3]
38	Oregon	1.0403
39	Pennsylvania	0.8875
40	Puerto Rico[5]	0.4654
41	Rhode Island[4]	--------
42	South Carolina	0.9137
43	South Dakota	0.9045
44	Tennessee	0.8349
45	Texas	0.8496
46	Utah	0.8683
47	Vermont	1.0394
48	Virgin Islands	0.9032
49	Virginia	0.8469
50	Washington	1.0947
51	West Virginia	0.8114
52	Wisconsin	1.0190
53	Wyoming	0.9915
65	Guam	1.0252

[3] Wage index values are based on FY 2003 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or a budget neutrality adjustment calculated by multiplying the hospital wage index value for a given area by the budget neutrality factor. We have completed all of these adjustments and included them in the wage index values reflected in this table.

[4] All counties within the State are classified as urban.

[5] Based on CBSA designations Massachusetts and Puerto Rico have areas designated as rural. However, no IPPS hospitals are located in those rural area(s) for FY 2008. Because more recent data is not available for those areas, we are using the methodology described in this final rule.

[FR Doc. 07–4292 Filed 8–30–07; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA—B–7727]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama:					
Jefferson	Unincorporated areas of Jefferson County (06–04–BU17P).	June 28, 2007; July 5, 2007; *Birmingham News*.	The Honorable Bettye Collins, President, Jefferson County Commission, Jefferson County, 716 Richard Arrington Jr. Boulevard North, Birmingham, Alabama 35203.	December 27, 2006	010217
Madison	City of Huntsville (06–04–BT85P).	June 22, 2007; June 29, 2007; *Madison County Record*.	The Honorable Loretta Spencer, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.	September 28, 2007	010153
Madison	City of Madison (06–04–BT85P).	June 22, 2007; June 29, 2007; *Madison County Record*.	The Honorable Sandy Kirkindall, Mayor, City of Madison, 100 Hughes Road, Madison, Alabama 35758.	September 28, 2007	010308
St. Clair	St. Clair County (07–04–1138P).	June 28, 2007; July 5, 2007; *St. Clair News-Aegis*.	The Honorable Stanley D. Batemon, Chairman, St. Clair County, Board of Commissioners, 165 Fifth Avenue, Suite 100, Ashville, Alabama 35953.	July 24, 2007	010290
Arizona:					
Maricopa	City of Mesa (07–09–0549P).	June 14, 2007; June 21,2007; *Arizona Business Gazette*.	The Honorable Keno Hawker, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211–1466.	September 20, 2007	040048

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Maricopa	City of Tucson (07–09–0707P).	June 21, 2007; June 28, 2007; *The Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	June 4, 2007	040076
Yavapai	City of Prescott (07–09–0776P).	June 14, 2007; June 21, 2007; *Prescott Daily Courier*.	The Honorable Rowle Simmons, Mayor, City of Prescott, 201 South Cortez Street, Prescott, Arizona 86303.	May 21, 2007	040098
Yavapai	Unincorporated Areas of Yavapai County (06–09–BA63P).	June 21, 2007; June 28, 2007; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County, Board of Supervisors, 10 South Sixth Street, Cottonwood, Arizona 86326.	September 27, 2007	040093
Arkansas:					
Benton	City of Bentonville (06–06–B146P).	January 5, 2007; January 12, 2007; *Benton County Daily Record*.	The Honorable Terry Coberly, Mayor, City of Bentonville, City Hall, 117 West Central, Bentonville, Arkansas 72712.	December 13, 2006	050012
Benton	City of Rogers (06–06–BJ72P).	April 18, 2007; April 25, 2007; *Benton County Daily Record*.	The Honorable Steve Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, Arkansas 72756.	March 23, 2007	050013
Benton	Unincorporated Areas of Benton County (06–06–B146P).	January 5, 2007; January 12, 2007; *Benton County Daily Record*.	The Honorable Gary Black, Benton County Judge, 905 Northwest Eighth Street, Bentonville, Arkansas 72712.	December 13, 2006	050419
Craighead	City of Jonesboro (07–06–0299P).	June 22, 2007; June 29, 2007; *The Jonesboro Sun*.	The Honorable Doug Forman, Mayor, City of Jonesboro, 515 West Washington Avenue, Jonesboro, Arkansas 72401.	June 25, 2007	050048
California:					
Riverside	City of Corona (07–09–0879P).	June 14, 2007; June 21, 2007; *Press Enterprise*.	The Honorable Eugene Montanez, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, California 92882.	May 31, 2007	060250
San Diego	Unincorporated Areas of San Diego County (07–09–0601P).	June 21, 2007; June 28, 2007; *San Diego Daily Transcript*.	The Honorable Ron Roberts, Chairman, San Diego County, Board of Supervisors, County Administration Center, 1600 Pacific Highway, Room 335, San Diego, California 92101.	September 27, 2007	060284
Colorado:					
El Paso	City of Colorado Springs (05–08–0638P).	January 17, 2007; January 24, 2007; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	April 18, 2007	080060
El Paso	Unincorporated Areas of El Paso County (05–08–0638P).	January 17, 2007; January 24, 2007; *El Paso County News*.	The Honorable Sallie Clark, Chairperson, El Paso County, Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903.	April 18, 2007	080059
Jefferson	City of Golden (06–08–B552P).	June 14, 2007; June 21, 2007; *The Golden Transcript*.	The Honorable Charles J. Baroch, Mayor, City of Golden, 701 Ridge Road, Golden, Colorado 80403.	September 20, 2007	080090
Jefferson	City of Golden (07–08–0043P).	June 21, 2007; June 28, 2007; *The Golden Transcript*.	The Honorable Charles J. Baroch, Mayor, City of Golden, 701 Ridge Road, Golden, Colorado 80403.	September 27, 2007	080090
Jefferson	City of Lakewood (07–08–0439P).	June 14, 2007; June 21, 2007; *The Golden Transcript*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226.	September 20, 2007	085075
Jefferson	Unincorporated Areas of Jefferson County (06–08–B552P).	June 14, 2007; June 21, 2007; *The Golden Transcript*.	The Honorable Jim Congrove, Chairman, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419–5550.	September 20, 2007	080087
Delaware: New Castle.	Unincorporated Areas of New Castle County (07–03–0410P).	June 15, 2007; June 22, 2007; *Newark Post*.	The Honorable Chris Coons, County Executive, New Castle County, 87 Reads Way, New Castle, Delaware 19720.	May 18, 2007	105085
Florida:					
Orange	City of Orlando (05–04–A581P).	June 21, 2007; June 28, 2007; *Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, Florida 32802.	September 27, 2007	120186
Walton	Unincorporated Areas of Walton County (07–04–2769P).	June 21, 2007; June 28, 2007; *Northwest Florida Daily News*.	The Honorable Kenneth Pridgen, Chairman, Walton County, Board of Commissioners, 17400 State Highway 83 North, DeFuniak Springs, Florida 32433.	September 27, 2007	120317
Georgia:					
Bryan	City of Richmond Hill (07–04–0419P).	May 23, 2007; May 30, 2007; *Bryan County News*.	The Honorable Richard R. Davis, Mayor, City of Richmond Hill, P.O. Box 250, Richmond Hill, Georgia 31324.	August 30, 2007	130018
Whitfield	City of Dalton (07–04–3918X).	June 1, 2007; June 8, 2007; *Dalton Daily Citizen*.	The Honorable Raymond A. Elrod, Sr., Mayor, City of Dalton, P.O. Box 1205, Dalton, Georgia 30722.	September 20, 2007	130194
Illinois:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Cook	City of Chicago (07–05–1665P).	June 21, 2007; June 28, 2007; *Daily Herald*.	The Honorable Richard M. Daley, Mayor, City of Chicago, 121 North La Salle Street, Room 504, Chicago, Illinois 60602.	July 2, 2007	170074
Cook	City of Des Plaines (07–05–1665P).	June 21, 2007; June 28, 2007; *Daily Herald*.	The Honorable Anthony Arredia, Mayor, City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016.	July 2, 2007	170081
Cook	Village of Elk Grove (07–05–2483P).	June 13, 2007; June 25, 2007; *Elk Grove Journal*.	The Honorable Craig B. Johnson, Mayor, Village of Elk Grove, 901 Wellington Avenue, Elk Grove, Illinois 60007.	August 30, 2007	170088
Cook	Village of Rosemont (07–05–1665P).	June 21, 2007; June 28, 2007; *Daily Herald*.	The Honorable Donald Stephens, Village President, Village of Rosemont, Rosemont Hall, 9501 West Devon Avenue, Rosemont, Illinois 60018.	July 2, 2007	170156
Cook	Unincorportaed Areas of Cook County (07–05–1665P).	June 21, 2007; June 28, 2007; *Daily Herald*.	The Honorable Todd H. Stroger, President, Cook County, Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	July 2, 2007	170054
Cook	Unincorporated Areas of Cook County (07–05–2483P).	June 13, 2007; June 25, 2007; *Elk Grove Journal*.	The Honorable Todd H. Stroger, President, Cook County, Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	August 30, 2007	170054
Lake	Unincorporated Areas of Lake County (07–05–0638P).	June 14, 2007; June 21, 2007; *Lake County News-Sun*.	The Honorable Suzi Schmidt, Chair, Lake County Board, 18 North County Street, Waukegan, Illinois 60085.	June 18, 2007	170357
Lake	Village of Round Lake Park (07–05–0638P).	June 14, 2007; June 21, 2007; *Lake County News-Sun*.	The Honorable Jean McCue, Mayor, Village of Round Lake Park, 203 East Lake Shore Drive, Round Lake, Illinois 60073.	June 18, 2007	170391
Will	City of Lockport (07–05–0135P).	April 11, 2007; April 25, 2007; *Homer Glen Sun*.	The Honorable Tim Murphy, Mayor, City of Lockport, 222 East Ninth Street, Lockport, Illinois 60441.	June 18, 2007	170703
Will	City of Naperville (07–05–0767P).	June 14, 2007; June 21, 2007; *Naperville Sun*.	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, Illinois 60540.	May 24, 2007	170213
Will	Unincorporated Areas of Will County (07–05–0135P).	April 11, 2007; April 25, 2007; *Homer Glen Sun*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	June 18, 2007	170695
Will	Unincorporated Areas of Will County (07–05–0767P).	June 14, 2007; June 21, 2007; *Naperville Sun*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	May 24, 2007	170695
Indiana:					
Allen	Unincorporated Areas of Allen County (07–05–2787P).	June 21, 2007; June 28, 2007; *Journal Gazette*.	The Honorable Linda K. Bloom, County Administrator, Allen County, Board of Commissioners, County Building, One East Main Street, Room 200, Fort Wayne, Indiana 46802.	September 27, 2007	180302
Lake	Town of St. John (06–05–BA28P).	June 21, 2007; June 28, 2007; *Post-Tribune*.	The Honorable Michael S. Fryzel, President, Town Council, Town of St. John, 10955 West 93rd Avenue, St. John, Indiana 46373.	May 29, 2007	180141
Minnesota: Anoka	City of Blaine (07–05–3169P).	May 18, 2007; May 25, 2007; *Blaine-Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive Northeast, Blaine, Minnesota 55449–8101.	April 24, 2007	270007
Mississippi:					
Leflore	City of Greenwood (06–04–BU48P).	June 21, 2007; June 28, 2007; *Greenwood Commonwealth*.	The Honorable Sheriel Perkins, Mayor, City of Greenwood, P.O. Box 907, Greenwood, Mississippi 38935–0907.	September 27, 2007	280102
Leflore	Unincorporated Areas of Leflore County (06–04–BU48P).	June 21, 2007; June 28, 2007; *Greenwood Commonwealth*.	The Honorable Robert Moore, Chairman, Leflore County Council, P.O. Box 250, Greenwood, Mississippi 38935.	September 27, 2007	280101
Missouri:					
Greene	Unincorporated Areas of Greene County (07–07–0395P).	June 21, 2007; June 28, 2007; *Springfield News Leader*.	The Honorable David Coonrod, Presiding Commissioner, Greene County Board of Commissioners, 933 North Roberson, Springfield, Missouri 65802.	September 27, 2007	290782
Phelps	City of Rolla (07–07–0005P).	June 20, 2007; June 27, 2007; *Rolla Daily News*.	The Honorable William Jenks III, Mayor, City of Rolla, P.O. Box 979, Rolla, Missouri 65402.	September 26, 2007	290285
St. Louis	City of Chesterfield (06–07–B058P).	July 12, 2007; July 19, 2007; *St. Louis Daily Record*.	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, Missouri 63017–0670.	August 23, 2007	290896

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
St. Louis	Unincorporated Area of St. Louis County (06–07–B058P).	July 12, 2007; July 19, 2007; *St. Louis Daily Record*.	The Honorable Charlie A. Dooley, County Executive, St. Louis County, 41 South Central Avenue, Clayton, Missouri 63105.	August 23, 2007	290327
Nebraska:					
Saunders	City of Ashland (06–07–B193P).	May 24, 2007; May 31, 2007; *Ashland Gazette*.	The Honorable Ronna Wigg, Mayor, City of Ashland, 2304 Silver Street, Ashland, Nebraska 68003.	August 30, 2007	310196
Saunders	Unincorporated Areas of Saunders County (06–07–B193P).	May 24, 2007; May 31, 2007; *Ashland Gazette*.	The Honorable Kenneth Kuncl, Chairman, Saunders County, Board of Supervisors, 109 North Railway, Prague, Nebraska 68050.	August 30, 2007	310195
New Mexico:					
Chaves	City of Roswell (06–06–B007P).	June 28, 2007; July 5, 2007; *Roswell Daily Record*.	The Honorable Sam D. LaGrone, Mayor, City of Roswell, P.O. Box 1837, Roswell, New Mexico 88202.	October 4, 2007	350006
Chaves	Unincorporated Areas of Chaves County (06–06–B007P).	June 28, 2007; July 5, 2007; *Roswell Daily Record*.	Mr. Stanton Riggs, County Manager, Chaves County, P.O. Box 1817, Roswell, New Mexico 88202.	October 4, 2007	350125
New York:					
Jefferson	Town of Pamelia (07–02–0466P).	June 21, 2007; June 28, 2007; *Watertown Daily Times*.	The Honorable Lawrence Longway, Town Supervisor, Town of Pamelia, 25859 State Route 37, Watertown, New York 13601.	December 27, 2007	360346
Orange	Town of Chester (06–02–B447P).	June 14, 2007; June 21, 2007; *Times Herald Record*.	Mr. William J. Tully, Town Supervisor, Town of Chester, 1786 Kings Highway, Chester, New York 10918.	November 9, 2007	360870
Orange	Village of Chester, (06–02–B447P).	June 14, 2007; June 21, 2007; *Times Herald Record*.	The Honorable Joseph Battiato, Mayor, Village of Chester, 47 Main Street, Chester, New York 10918.	November 9, 2007	361541
Ohio:					
Butler	City of Fairfield (07–05–2018P).	June 21, 2007; *Middletown Journal*, June 28, 2007; *Journal News*.	The Honorable Ron D'Epifanio, Mayor, City of Fairfield, 5350 Pleasant Avenue, Fairfield, Ohio 45014.	September 27, 2007	390038
Licking	City of Newark (06–05–BP23P).	June 14, 2007; June 21, 2007; *The Newark Advocate*.	The Honorable Bruce Bain, Mayor, City of Newark, 40 West Main Street, Newark, Ohio 43055.	September 20, 2007	390335
Warren	City of Mason (07–05–1898P).	June 21, 2007; June 28, 2007; *Pulse Journal*.	The Honorable Charlene Pelfrey, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, Ohio 45040.	September 27, 2007	390559
Oklahoma: Oklahoma.	City of Oklahoma City (07–06–0604P).	June 14, 2007; June 21, 2007; *The Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Street, Third Floor, Oklahoma City, Oklahoma 73102.	May 22, 2007	405378
Oregon: Columbia	City of St. Helens (07–10–0169P).	June 20, 2007; June 27, 2007; *Scappoose South County Spotlight*.	The Honorable Randy Peterson, Mayor, City of St. Helens, P.O. Box 278, St. Helens, Oregon 97051.	September 26, 2007	410040
Pennsylvania: Chester.	Borough of South Coatesville (07–03–0866X).	June 28, 2007; July 5, 2007; *The Daily Local*.	The Honorable Gregory V. Hines, Council President, Borough of Coatesville, 136 Modena Road, South Coatesville, Pennsylvania 19320.	June 11, 2007	420288
Puerto Rico: Puerto Rico.	Commonwealth of Puerto Rico (07–02–0196P).	May 25, 2007; May 31, 2007; *San Juan Star*.	The Honorable Anibal Acevedo-Vila, Governor of Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	July 19, 2007	720000
South Carolina:					
Anderson	Unincorporated Areas of Anderson County (06–04–C085P).	May 17, 2007; May 24, 2007; *Anderson Independent Mail*.	Mr. Joey R. Preston, County Administrator, Anderson County, P.O. Box 8002, Anderson, South Carolina 29622.	July 26, 2007	450013
Berkley	Unincorporated Areas of Berkeley County (06–04–C284P).	June 20, 2007; June 27, 2007; *Berkeley Independent*.	The Honorable Daniel W. Davis, Supervisor and County Councilman, Berkeley County, 1003 Highway 52, Moncks Corner, South Carolina 29461.	September 26, 2007	450029
Richland	Unincorporated Areas of Richland County (07–04–3361P).	June 15, 2007; June 22, 2007; *The Columbia Star*.	The Honorable Joseph McEachern, Chairman, Richland County Council, Richland County Administrative Building, 2020 Hampton Street, Second Floor, Columbia, South Carolina 29204.	September 21, 2007	450170
Texas:					
Bandera	Unincorporated Areas of Bandera County (06–06–BJ92P).	June 20, 2007; June 27, 2007; *Bandera Bulletin*.	The Honorable Richard A. Evans, Bandera County Judge, P.O. Box 877, Bandera, Texas 78003.	September 26, 2007	480020
Bastrop	City of Elgin (07–06–0779P).	May 16, 2007; May 23, 2007; *Elgin Courier*.	The Honorable Gladys Markert, Mayor, City of Elgin, 310 North Main Street, Elgin, Texas 78621.	August 30, 2007	480023
Bexar	City of San Antonio (07–06–0434P).	July 5, 2007; July 12, 2007; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	October 11, 2007	480045

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Bexar	City of Shavano Park (06–06–BK20P).	June 21, 2007; June 28, 2007; *Daily Commercial Recorder*.	The Honorable David A. Marne, Mayor, City of Shavano Park, 900 Saddle Tree Court, Shavano Park, Texas 78231.	September 27, 2007	480047
Comal	Unincorporated Areas of Comal County (06–06–BB92P).	February 22, 2007; March 1, 2007; *The Herald-Zeitung*.	The Honorable Danny Scheel, Comal County Judge, 199 Main Plaza, New Braunfels, Texas 78130.	May 24, 2007	485463
Collin	City of Allen (06–06–B489P).	June 14, 2007; June 21, 2007; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, Texas 75013.	July 2, 2007	480131
Dallas	City of Coppell (06–06–BE95P).	June 13, 2007; June 20, 2007; *Coppell Gazette*.	The Honorable Doug Stover, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	September 19, 2007	480170
Dallas	City of Dallas (06–06–BE95P).	June 13, 2007; June 20, 2007; *Coppell Gazette*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, Room 5/F/N, Dallas, Texas 75201.	September 19, 2007	480171
Dallas	City of Irving (06–06–BE95P).	June 13, 2007; June 20, 2007; *Coppell Gazette*.	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, Texas 75060.	September 19, 2007	480180
Fort Bend	Fort Bend County M.U.D. #23 (06–06–BI97P).	June 21, 2007; June 28, 2007; *Fort Bend Herald*.	The Honorable Ellen Hughes, District President, Fort Bend County Municipal Utility, District No. 23, 1715 Misty Fawn Lane, Fresno, Texas 77545.	September 27, 2007	481590
Fort Bend	City of Missouri City (06–06–BI97P).	June 21, 2007; June 28, 2007; *Fort Bend Herald*.	The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, Texas 77459.	September 27, 2007	480304
Fort Bend	Unincorporated Areas of Fort Bend County (06–06–BI97P).	June 21, 2007; June 28, 2007; *Fort Bend Herald*.	The Honorable Robert E. Herbert, PhD, Fort Bend County Judge, 301 Jackson Street, Richmond, Texas 77469.	September 27, 2007	480228
Hood	City of Granbury (07–06–0376P).	June 20, 2007; June 27, 2007; *Hood County News*.	The Honorable David Southern, Mayor, City of Granbury, 116 West Bridge Street, Granbury, Texas 76048.	September 26, 2007	480357
Jones and Taylor.	City of Abliene (07–06–1080P).	June 21, 2007; June 28, 2007; *Abilene Reporter-News*.	The Honorable Norm Archilbald, Mayor, City of Abilene, 717 Byrd Drive, Abilene, Texas 79601.	September 27, 2007	485450
McLennan	City of Waco (07–06–0187P).	June 21, 2007; June 28, 2007; *Waco Tribune Herald*.	The Honorable Virginia Dupuy, Mayor, City of Waco, P.O. Box 2570, Waco, Texas 76702.	September 27, 2007	480461
McLennan	Unincorporated Areas of McLennan County (07–06–0187P).	June 21, 2007; June 28, 2007; *Waco Tribune Herald*.	The Honorable Jim Lewis, McLennan County Judge, McLennan County Courthouse, 501 Washington Avenue, Waco, Texas 78701.	September 27, 2007	480456
Tarrant	City of Colleyville (07–06–0840P).	June 22, 2007; June 29, 2007; *Colleyville Courier*.	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, Texas 76034.	May 30, 2007	480590
Tarrant	City of Fort Worth (07–06–0791P).	April 12, 2007; April 19, 2007; *Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 12, 2007	480596
Tarrant	City of Fort Worth (07–06–0825P).	May 24, 2007; May 31, 2007; *Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	August 30, 2007	480596
Tarrant	City of Haslet (07–06–1421P).	June 15, 2007; June 22, 2007; *Haslet Harbinger*.	The Honorable Gary Hulsey, Mayor, City of Haslet, 105 Main Street, Haslet, Texas 76052.	May 29, 2007	480600
Tarrant	City of Mansfield (07–06–1272P).	June 22, 2007; June 29, 2007; *Mansfield News Mirror*.	The Honorable Mel Neuman, Mayor, City of Mansfield, 1200 East Board Street, Mansfield, Texas 76063.	September 28, 2007	480606
Virginia:					
Frederick	Unincorporated Areas of Frederick County (06–03–B184P).	June 14, 2007; June 21, 2007; *Winchester Star*.	Mr. John Riley, Jr., County Administrator, Frederick County, 107 North Kent Street, Winchester, Virginia 22601.	September 12, 2007	510063
Frederick	City of Winchester (06–03–B184P).	June 14, 2007; June 21, 2007; *Winchester Star*.	The Honorable Elizabeth Minor, Mayor, City of Winchester, 422 National Avenue, Winchester, Virginia 22601.	September 12, 2007	510173
West Virginia:					
Greenbrier	Unincorporated Areas of Greenbrier County (07–03–0022P).	April 14, 2007; April 21, 2007; *Mountain Messenger*.	The Honorable Betty Crookshanks, President, Greenbrier County Commission, 200 North Court Street, Lewisburg, West Virginia 24901.	July 30, 2007	540040
Greenbrier	City of White Sulphur Springs (07–03–0022P).	April 14, 2007; April 21, 2007; *Mountain Messenger*.	The Honorable Debra Fogus, Mayor, City of White Sulphur Springs, 34 West Main Street, White Sulphur Springs, West Virginia 24986.	July 30, 2007	540045

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

Dated: August 21, 2007.

David I. Maurstad,

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

[FR Doc. E7–17341 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Barnes County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–7705			
Sheyenne River	Approximately 3200 feet downstream from 117th Ave SE (Barnes County Highway 21).	+1214	City of Valley City.
	Just upstream from Interstate 94	+1219	
	Approximately 3350 feet upstream from 65th Street NE	+1224	
	Approximately 5600 feet upstream from Maryvale Bridge	+1228	
Sheyenne River	Approximately 700 feet upstream from ND Highway 46	+1162	Barnes County (Unincorporated Areas).
	Just downstream from 43rd St. SE (Barnes County Highway 21).	+1198	
	Just Downstream from Baldhill Dam	+1239	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected

ADDRESSES

City of Valley City

Maps are available for inspection at City Hall, 220 3rd St. NE, Valley City, ND 58072.

Barnes County (Unincorporated Areas)

Maps are available for inspection at Barnes County Courthouse, 230 4th Street NW, Valley City, ND 58072.

City of Harrisonburg, Independent City, Virginia
Docket No: FEMA–B–7462

Blacks Run	Just upstream of Early Road	+1199	City of Harrisonburg.
	Approximately 400 feet downstream of Acorn Drive	+1376	
Blacks Run Tributary No. 1	Approximately at the confluence with Blacks Run	+1269	City of Harrisonburg.
	Approximately 1180 feet upstream of Terri Drive	+1453	
Blacks Run Tributary No. 2	Approximately 80 feet upstream of the confluence with Blacks Run Tributary No. 1.	+1270	City of Harrisonburg.
	Approximately 1400 feet upstream of Peach Grove Avenue	+1377	
Blacks Run Tributary No. 3	Approximately at the confluence with Blacks Run Tributary No. 1.	+1307	City of Harrisonburg.
	Approximately 80 feet downstream of Reservoir Street	+1418	
	Approximately 150 feet upstream of Reservoir Street	+1430	
Sunset Heights Branch	Approximately 650 feet upstream of Erickson Avenue	+1271	City of Harrisonburg.
	Approximately 150 feet down stream of West Market Street	+1336	
	Approximately 1100 feet upstream of West Market Street	+1364	
West Fork Sunset Heights Branch.	Approximately at the confluence of Sunset Heights Branch	+1309	City of Harrisonburg.
	Approximately 900 feet upstream of Garbers Church Road	+1364	
	Approximately 1100 feet upstream of Garbers Church Road	+1366	

Depth in feet above ground.

*National Geodetic Vertical Datum.

+National American Vertical Datum.

Individual points for the City of Harrisonburg were processed to obtain place specific conversion factors. These individual point factors were then averaged throughout the community to obtain an average community wide conversion factor of .443 feet. To convert between NAVD and NGVD for the City of Harrisonburg use the following formula: NAVD = NGVD − 0.443.

City of Harrisonburg

Maps are available for inspection at City of Harrisonburg, Department of Community Development, 409 South Main Street, Harrisonburg, Virginia 22801.

Kanawha County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–7723

Alum Creek	Begins at approximately 298 feet downstream of CSX Railroad.	+519	Kanawha County (Unincorporated Areas).
	Ends approximately at 3649 feet upstream of Rebel Mountain Road.	+709	
Brier Creek	Begins at approximately 1180 feet downstream of Sproul Road.	+608	Kanawha County (Unincorporated Areas).
	Ends approximately at 2390 feet upstream of Brown Land Road.	+702	
Dutch Hollow	Begins at approximately 3125 feet downstream of I–64 Bridge	+590	City of Dunbar, Kanawha County (Unincorporated Areas).
	Ends approximately at 4850 feet upstream of I–64 Bridge	+666	
Finney Branch	Begins at approximately 1050 feet downstream of Charles Avenue.	+590	City of Dunbar, Kanawha County (Unincorporated Areas).
	Ends approximately at 360 feet upstream of Gravel Drive	+601	
Georges Creek	Begins at approximately 2575 feet downstream of Malden Road.	+597	Kanawha County (Unincorporated Areas).
	Ends approximately at 3490 feet upstream of Georges Creek Drive.	+721	
Indian Creek	Begins at approximately 3775 feet downstream of State Route 114.	+611	Kanawha County (Unincorporated Areas).
	Ends approximately at 1000 feet upstream of Boner Drive	+693	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Magazine Branch	Starts at approximately 920 feet downstream of Pennsylvania Avenue.	+594	City of Charleston, Kanawha County (Unincorporated Areas).
	Ends approximately at 100 feet upstream of Pacific Street	+688	
Middle Fork	Begins at approximately 480 feet downstream of Middle Fork Road.	+606	Kanawha County (Unincorporated Areas).
	Ends approximately at 135 feet upstream of Middle Fork Road	+630	
Mill Creek	Begins at approximately 90 feet downstream of Rail Road Bridge.	+605	Kanawha County (Unincorporated Areas).
	Ends approximately at 4550 feet upstream of Mill Creek Road	+775	
Two and Three Quarter Mile Creek.	Begins at approximately 220 feet downstream of U.S. Route 60.	+589	Kanawha County (Unincorporated Areas).
	Ends approximately at 1880 feet upstream of Cane Fork Road	+618	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

City of Charleston

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301.

City of Dunbar

Maps are available for inspection at 210 12th Street, Dunbar, WV 25064.

Kanawha County (Unincorporated Areas)

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301.

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

Dated: August 22, 2007.

David I. Maurstad,

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

[FR Doc. E7–17319 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XC23

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September and October time period of the 2007 fishing year. The adjustment will allow for maximum utilization of the General category quota. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial fishing opportunities without risking overharvest of the General category quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

The 2007 fishing year began on June 1, 2007, and ends December 31, 2007. NMFS proposed 2007 fishing year specifications to set BFT quotas and General category effort controls on April 4, 2007 (72 FR 16318). These proposed specifications considered adjusting the daily retention limits throughout the 2007 season and received favorable public support. NMFS published final specifications on June 18, 2007 (72 FR 33401) and increased the default General category retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip to three large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip through August 31, 2007. This action enhances commercial BFT fishing opportunities to those vessels permitted in the Atlantic tunas General category and the Highly Migratory Species (HMS) Charter/Headboat category, while fishing commercially. In addition, NMFS stated that it would consider adjustment of retention of retention limits for future time periods, if warranted.

Daily Retention Limits

Pursuant to this action, the daily BFT retention limits for the Atlantic tunas General and HMS Charter/Headboat categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Daily Limit
Atlantic tunas General and HMS Charter/ Headboat (while fishing commercially)	June 1 through August 31, 2007, inclusive.	All	Three BFT per vessel per trip, measuring 73 inches (185 cm) curved fork length (CFL) or greater.
	September 1 through October 31, 2007, inclusive.	All	Three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater.
	November 1 through December 31, 2007, inclusive.	All	One BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater.

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel to provide for maximum utilization of the General category quota for BFT. Such adjustments to the commercial retention limit are based on NMFS' consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

As of August 24, 2007, the coast wide General category has landed 29.4 metric tons (mt) out of a possible 643.6 mt, and catch rates remain less that 1.0 mt per day even though the General category retention limit was increased to three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater for the June through August time period. Starting on September 1, 2007, the General category daily retention limit, located at § 635.23(a)(2), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This scheduled retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the September and October portion of the 2007 fishing year. The criteria include but are not limited to: the usefulness of information obtained from catches for biological sampling and monitoring of the status of the stock; the date and the likelihood of closure if no adjustment is made; the effects of the adjustment on BFT rebuilding and overfishing; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. Based on these considerations, NMFS has determined that the General category retention should be adjusted. Therefore, NMFS increases the General category retention limit from the default limits effective September 1 through October 31, 2007. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessel permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS selected the daily retention limit and the duration after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS continues to receive information refining its understanding of the commercial sector's specific needs regarding retention limits midway through the 2007 season. NMFS assessments and analyses show catch rates to date have been low and that there is sufficient quota for an increase to the General category retention limit during the months of September and October.

NMFS has recently become aware of increased availability of large medium and giant BFT off northern Atlantic fishing grounds from fishing reports, vessels participating in other fisheries, and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates if fishery participants are

authorized to harvest three large medium or giant BFT per day.

The regulations implementing the HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the HMS FMP. Adjustment to the retention limit needs to be effective September 1, 2007, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities from fishermen who only have access to the fishery during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 28, 2007.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–4283 Filed 8–28–07; 1:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 169
Friday, August 31, 2007

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 2007–0022]

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

Availability of the Report: Review of the Pathogen Reduction; Hazard Analysis and Critical Control Point Systems Final Rule Pursuant to Section 610 of the Regulatory Flexibility Act, as Amended

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of its report entitled, ''Review of the Pathogen Reduction; Hazard Analysis and Critical Control Point Systems Final Rule Pursuant to Section 610 of the Regulatory Flexibility Act, As Amended.''

ADDRESSES: The report is available in Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is also available on the Internet at *http://www.fsis.usda.gov/regulations_&_policies/2007_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: John O'Connell, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 720–0345, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Section 610 of the Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601–612), requires that Federal agencies conduct a review of their rules that have a significant economic impact upon a substantial number of small entities. Agencies are required to conduct the review by the end of 10 years after the implementation of such a rule.

The purpose of the review is to determine whether the rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact upon a substantial number of small entities.

On January 28, 2005, FSIS published a schedule of its planned reviews in the **Federal Register** (70 FR 4047)—Regulatory Flexibility Act; Amended Plan for Reviewing Regulations Under Section 610 Requirements. According to the schedule, the Agency would first review the Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems final rule (61 FR 38806).

FSIS assembled a team that conducted a review of the regulations implemented by the PR/HACCP rule. The team examined the five factors enumerated by Section 610 of the RFA: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The team also looked at the economic impact of the rule on the meat and poultry industries.

As part of its effort to satisfy the requirements of Section 610 of the RFA, FSIS published on August 12, 2005, a notice in the **Federal Register** (70 FR 47147) requesting comments from the public on the impact of the PR/HACCP rule and on the relevant factors enumerated by Section 610 of the RFA. The Agency received 19 comments from the public concerning the PR/HACCP rule. The Agency also conducted a survey of nine small and very small meat and poultry establishments in order to ensure that it received comments on the PR/HACCP rule from small and very small businesses affected by the rule.

FSIS summarized the comments it received and gives its response to these comments in the review report. In response to the comments and the review that the team conducted, the report recommends that the Agency take several steps to enhance and strengthen its outreach to small and very small businesses regarding HACCP and pathogen reduction efforts. Based on its analysis of the comments, FSIS determined that it was not necessary to make any changes to the PR/HACCP rule.

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_Proposed_Rules_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, 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 August 27, 2007.

Alfred Almanza,

Administrator.

[FR Doc. E7–17212 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100, 104, and 114

[Notice 2007–16]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to its rules governing electioneering communications. These proposed rules would implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.*, which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before October 1, 2007. The Commission will hold a hearing on the proposed rules on October 17, 2007 at 10 a.m. Anyone seeking to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Ron B. Katwan, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to *wrtl.ads@fec.gov.* If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Ron B. Katwan, Assistant General Counsel, Mr. Anthony T. Buckley, Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed revisions to 11 CFR parts 100, 104 and 114 that would implement the recent U.S. Supreme Court decision in *FEC* v. *Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (June 25, 2007), available at *http://www.fec.gov/law/litigation/wrtl_sct_decision.pdf.*

I. Background

A. Statutory and Regulatory Provisions Governing Electioneering Communications

The Bipartisan Campaign Reform Act of 2002 (''BCRA'') [1] amended the Federal Election Campaign Act of 1971, as amended [2] (the ''Act'' or ''FECA''), by adding a new category of political communications, ''electioneering communications,'' to those already governed by the Act. *See* 2 U.S.C. 434(f)(3). Electioneering communications are broadcast, cable or satellite communications that refer to a clearly identified candidate for Federal office, are publicly distributed within sixty days before a general election or thirty days before a primary election, and are targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A)(i). Those who make electioneering communications are subject to certain reporting obligations. *See* 2 U.S.C. 434(f)(1) and (2). Corporations and labor organizations are prohibited from using general treasury funds to finance electioneering communications, directly or indirectly. 2 U.S.C. 441b(b)(2).

The Act exempts certain communications from the definition of ''electioneering communication'' found in 2 U.S.C. 434(f)(3)(B)(i) to (iii), and specifically authorizes the Commission to promulgate regulations exempting other communications as long as the exempted communications do not promote, support, attack or oppose (''PASO'') a candidate. *See* 2 U.S.C. 434(f)(3)(B)(iv), *citing* 2 U.S.C. 431(20)(A)(iii).

The Commission promulgated regulations to implement BCRA's electioneering communications provisions. *Final Rules and Explanation and Justification for Regulations on Electioneering Communications*, 67 FR 65190 (Oct. 23, 2002) (''*EC E&J*'').[3] *See also* 11 CFR 100.29 (defining ''electioneering communication''); 104.20 (implementing electioneering communications reporting requirements); 110.11(a) (requiring disclaimers in all electioneering communications); 114.2 (prohibiting corporations and labor organizations from making electioneering communications); 114.10 (allowing qualified non-profit corporations (''QNCs'') to make electioneering communications); 114.14 (restricting indirect corporate and labor organization funding of electioneering communications). Commission regulations exempt five types of communications from the definition of ''electioneering communication.'' *See* 11 CFR 100.29(c).[4]

B. U.S. Supreme Court Precedent Regarding Electioneering Communications

In *McConnell* v. *FEC,* 540 U.S. 93 (2003) (*''McConnell''*), the U.S. Supreme Court upheld BCRA's electioneering communication provisions against various constitutional challenges. *Id.* at 194, 201–02, 207–08. Specifically, the Supreme Court held that the prohibition on the use of general treasury funds by corporations and labor organizations to pay for electioneering communications in 2 U.S.C. 441b(b)(2) was not facially overbroad. *Id.* at 204–06. In *Wisconsin Right to Life, Inc.* v. *FEC,* 546 U.S. 410 (2006) (*''WRTL I''*), the U.S. Supreme Court explained that *McConnell's* upholding of section 441b(b)(2) against a facial constitutional challenge did not preclude further as-applied challenges to the corporate and labor organization funding prohibitions. *See WRTL I,* 546 U.S. at 411–12. Subsequently, in *FEC* v.

[1] Pub. L. 107–155, 116 Stat. 81 (2002).

[2] 2 U.S.C. 431 *et seq.*

[3] The Commission revised its electioneering communications regulations in 2005, in response to *Shays* v. *FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd*, 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied*, No. 04–5352 (D.C. Cir. Oct. 21, 2005). *See Final Rules and Explanation and Justification for Regulations on Electioneering Communications*, 70 FR 75713 (Dec. 21, 2005).

[4] The exemptions in 11 CFR 100.29(c)(1) (non-broadcast communications), 100.29(c)(2) (news stories, commentaries or editorials), 100.29(c)(3) (expenditures and independent expenditures) and 100.29(c)(4) (candidate debates or forums) are based on the express language of the Act. *See* 2 U.S.C. 434(f)(3)(B)(i) to (iii). Section 100.29(c)(5) exempts communications paid for by State or local candidates that do not PASO any Federal candidate.

Wisconsin Right to Life, Inc., 127 S. Ct. 2652 (2007) (*''WRTL II''*), the Supreme Court reviewed an as-applied challenge brought by a non-profit corporation seeking to use its own general treasury funds, which included donations it had received from other corporations, to pay for broadcast advertisements referring to Senator Feingold and Senator Kohl during the electioneering communications period before the 2004 general election, in which Senator Feingold, but not Senator Kohl, was on the ballot. The plaintiff argued that these communications were genuine issue ads run as part of a grassroots lobbying campaign on the issue of Senate filibusters on judicial nominations. *WRTL II,* 127 S. Ct. at 2660–61. The Supreme Court held that section 441b(b)(2) was unconstitutional as applied to the plaintiff's advertisements because the advertisements were not the ''functional equivalent of express advocacy.'' *Id.* at 2670, 2673. A communication is the ''functional equivalent of express advocacy'' only if it ''is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'' *Id.* at 2667.

The Commission is initiating this rulemaking to implement the Supreme Court's decision in *WRTL II.* The Commission seeks public comment generally regarding the effect of the *WRTL II* decision on the Commission's rules governing corporate and labor organization funding of electioneering communications, the definition of ''electioneering communication,'' and the rules governing reporting of electioneering communications.

II. Proposed Rules on Electioneering Communications

A. Scope of the Rulemaking

1. Scope of the Proposed Electioneering Communications Exemption

The Commission is seeking public comment on two proposed alternative ways to implement the *WRTL II* decision in the rules governing electioneering communications. The first alternative would incorporate the new exemption into the rules prohibiting the use of corporate and labor organization funds for electioneering communications in 11 CFR part 114. The second alternative would incorporate the new exemption into the definition of ''electioneering communication'' in 11 CFR 100.29.

Alternative 1—Proposed revisions to the corporate and labor organization prohibition.

Under the Act, electioneering communications are subject to both funding restrictions and reporting requirements. Specifically, entities that spend a total of more than $10,000 on electioneering communications in a calendar year must file disclosure reports with the FEC. *See* 2 U.S.C. 434(f)(1). Corporations and labor organizations are prohibited from using general treasury funds to pay for any electioneering communication. *See* 2 U.S.C. 441b(b)(2). The plaintiff in *WRTL II* challenged only BCRA's corporate and labor organization funding restrictions and did not contest either the definition of ''electioneering communication'' in section 434(f)(3), or the reporting requirement in section 434(f)(1). *See WRTL II,* 127 S. Ct. at 2658–59; *see also* Verified Complaint for Declaratory and Injunctive Relief, ¶ 36 (July 28, 2004) in *Wisconsin Right to Life, Inc.* v. *FEC* (No. 04–1260), *available at http://fecds005.fec.gov/law/litigation_related.shtml#wrtl_dc* (''WRTL does not challenge the reporting and disclaimer requirements for electioneering communications, only the prohibition on using its corporate funds for its grass-roots lobbying advertisements.'') Accordingly, the Commission could construe the Supreme Court's holding that the Act's electioneering communication funding restrictions are unconstitutional as applied to certain advertisements as not extending to the reporting requirements for electioneering communications.

BCRA added the electioneering communications reporting requirements to the Act through a different provision (section 201) than the BCRA provision containing the corporate prohibition on making electioneering communications (section 203). The Commission seeks comment as to whether the scope of the *WRTL II* decision is limited to an as-applied challenge to the section 203 prohibitions and whether the Commission has the authority to change its electioneering communications rules beyond what is required by the Supreme Court's decision. Does the holding in *WRTL II* depend on a finding that the prohibition on using corporate and labor organization funds for electioneering communications in section 203 is a direct limitation on speech? Do the reporting requirements in section 201 implicate the same concerns about direct restrictions on First Amendment rights, given that *McConnell* specifically upheld the electioneering communications reporting provisions as constitutional because they ''d[o] not prevent anyone from speaking?'' *McConnell,* 540 U.S. at 201 (quoting *McConnell* v. *FEC,* 251 F. Supp. 2d 176, 241 (D.D.C. 2003)) (internal quotations omitted). *See also Alaska Right To Life Comm.* v. *Miles,* 441 F.3d 773, 788 (9th Cir. 2006) (''The [*McConnell*] Court was not * * * explicit about the appropriate standard of scrutiny with respect to disclosure requirements. However, in addressing extensive reporting requirements applicable to * * * 'electioneering communications' * * *, the Court did not apply 'strict scrutiny' or require a 'compelling state interest.' Rather, the Court upheld the disclosure requirements as supported merely by 'important state interests.' '') (internal quotation omitted); *Buckley* v. *Valeo,* 424 U.S. 1, 60–84 (1976) (upholding FECA's reporting requirements); *cf. Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio),* 459 U.S. 87, 98–99 (1982) (reporting requirements found unconstitutional when there was a ''reasonable probability'' that disclosure of information would lead to economic reprisals or physical threats).

Therefore, under Alternative 1, the Commission proposes to implement the *WRTL II* decision by creating an exemption solely from the prohibition on the use of corporate and labor organization funds to finance electioneering communications. The proposed revisions to 11 CFR 114.2 and proposed new section 114.15 would not create an exemption from either the overall definition of ''electioneering communication'' in section 100.29 or from the reporting requirements in section 104.20. Thus, corporations and labor organizations would be permitted to use general treasury funds for electioneering communications that qualify for the proposed exemption, but would be required to file electioneering communications disclosure reports once they spend more than $10,000 in a calendar year on such communications. *See* proposed revision to 11 CFR 104.20. The Commission seeks comment on this approach.

Alternative 2—Proposed revisions to the definition of ''electioneering communication.''

Under Alternative 2, the Commission proposes to place the new exemption in 11 CFR 100.29(c) as an additional exemption from the definition of ''electioneering communication.'' This alternative would construe the Supreme Court's decision in *WRTL II* to hold that communications that qualify for the *WRTL II* exemption may not be constitutionally regulated as electioneering communications (*i.e.*, if a communication satisfies the Court's test, it is not an ''electioneering communication,'' as that term is used in the Act), meaning that the associated reporting requirements are no longer applicable.

Placing the exemption within section 100.29(c) in the definition of ''electioneering communication'' would have at least two practical implications. First, if a communication satisfies the *WRTL II* exemption, and is therefore exempted from the definition of ''electioneering communication,'' the electioneering communications reporting requirements would not apply to the exempted communication. Second, an exemption from the definition of ''electioneering communication'' would extend beyond corporations and labor organizations to *all* ''persons'' paying for communications that satisfy the exemption articulated in *WRTL II. See* 11 CFR 104.20. The Commission understands this distinction would extend the Supreme Court's exemption to individuals, unincorporated entities, and QNCs, in addition to corporations and labor organizations. Would any other ''persons'' be affected? [5] The Commission seeks comment on all aspects of the impact of these proposed regulations on ''persons'' under the Act.

Does *WRTL II* either permit or necessitate an exemption from the definition of ''electioneering communication,'' or give the Commission authority to create such an exemption? Would the Commission's statutory authority to create exemptions under 2 U.S.C. 434(f)(3)(B)(iv) be sufficient to create an exemption that satisfies the requirements of *WRTL II*? If the Commission were to use its statutory authority set forth at 2 U.S.C. 434(f)(3)(B)(iv) to create exemptions, would the statutory provision's PASO requirement be applicable, or does *WRTL II* supersede that requirement with respect to a communication that qualifies for the *WRTL II* exemption? Would *WRTL II's* functional equivalent test be a reasonable statutory construction of PASO? The Commission seeks comment on all aspects of the appropriate scope of, and authority for, a new exemption.

The choice between Alternative 1 and Alternative 2 would also have implications for the coordinated communications rules, which rely in part on the definition of ''electioneering communication'' in section 100.29. *See* 2 U.S.C. 441a(a)(7)(C); 11 CFR 109.21(c). The Commission's coordinated communications rule includes four different content standards: (1) Electioneering communications; (2) public communications that republish campaign materials; (3) public communications that include express advocacy; and (4) public communications that refer to a Federal candidate during certain time periods before an election. *See* 11 CFR 109.21(c)(1)–(4). The proposed rules in Alternative 1 do not affect the coordinated communications rules because communications that qualify for the proposed exemption in section 114.15 would still be considered ''electioneering communications'' and thus meet the ''electioneering communication'' content standard in 11 CFR 109.21(c)(1). By contrast, because Alternative 2 creates an exemption from the definition of ''electioneering communication,'' any communication that qualifies for the exemption in proposed section 100.29(c)(6) could no longer meet the ''electioneering communication'' content standard in section 109.21(c)(1). However, under both alternatives, a communication that qualifies for the proposed new exemption may still be a ''coordinated communication'' under one of the other three content standards in sections 109.21(c)(2)–(4). Thus, under both alternatives, exempt communications made by corporations or labor organizations may still be prohibited in-kind contributions as ''coordinated communications.'' The Commission seeks comment on the effects of each alternative on the coordinated communication rule.

2. Impact on the Definition of Express Advocacy

WRTL II demarcated the constitutional reach of the Act's electioneering communications funding restrictions. Does *WRTL II* also provide guidance regarding the constitutional reach of other provisions in the Act? *WRTL II's* ''functional equivalent of express advocacy'' test limiting the electioneering communication prohibition draws upon the Supreme Court's express advocacy construction of ''independent expenditure,'' first appearing in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), and later applied in the context of section 441b's corporate expenditure ban in *FEC* v. *Massachusetts Citizens for Life, Inc.,* 479 U.S. 238 (1986). The Court's equating of the ''functional equivalent of express advocacy'' with communications that are ''susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate'' bears considerable resemblance to components of the Commission's definition of express advocacy at 11 CFR 100.22. Section 100.22(a) deems communications that ''in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)'' to be express advocacy. Express advocacy may also be found under section 100.22(b) when, in context, a communication ''could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s).'' Does *WRTL II* require the Commission to revise or repeal any portion of its definition of express advocacy at section 100.22? Does the ''functional equivalent of express advocacy'' test from *WRTL II* also demarcate the constitutional reaches of Commission regulation of independent expenditures?

Section 434(f)(3)(B)(ii) excludes ''an expenditure or an independent expenditure'' from the definition of ''electioneering communication.'' Would a definition of ''express advocacy'' (which, in turn, defines ''independent expenditure'') that subsumes all electioneering communications effectively nullify section 434(f) by deeming all ''functional equivalent'' communications to be ''expenditures'' and thus by definition not electioneering communications? Would these coextensive definitions leave any independent meaning to the electioneering communications reporting requirements, because there would be no remaining class of electioneering communications to be reported? Would this combination of definitions likewise rob the electioneering communication prohibition in section 441b(b)(2) (and proposed new 11 CFR 114.15) of independent significance by construing the corporate expenditure prohibition as coextensive with the corporate electioneering communications prohibition? What are the implications of having different regulatory language defining the scope of the prohibitions?

B. General Prohibition on Corporations and Labor Organizations Making Electioneering Communications

Alternative 1—Proposed Revisions to 11 CFR 114.2

Section 114.2(b)(2)(iii) implements the funding restrictions of 2 U.S.C. 441b(b)(2) by prohibiting corporations and labor organizations from ''[m]aking payments for an electioneering communication to those outside the restricted class.'' After the *WRTL II*

[5] Political committees are not currently subject to the Act's electioneering communications provisions because communications that constitute either expenditures or independent expenditures, provided that the expenditures or independent expenditures are required to be reported under the Act or Commission regulations, are exempt from the definition of ''electioneering communication.'' *See* 11 CFR 100.29(c)(3); *EC E&J,* 67 FR at 65197–98.

decision, that section must be amended to reflect that corporations and labor organizations cannot constitutionally be prohibited from funding certain types of communications that fall within the statutory definition of electioneering communications. However, placing a detailed exemption based on the *WRTL II* decision within section 114.2(b) could be confusing and difficult for the reader to find. Thus, the Commission proposes to set out the *WRTL II* exemption in a new proposed section 114.15, and to amend section 114.2(b) by cross-referencing the exemption in section 114.15. *See* proposed 11 CFR 114.2(b)(3) (''Except as provided at 11 CFR 114.10 and 114.15 * * * '').[6]

Alternative 2—No Proposed Changes

Under Alternative 2, no revisions to section 114.2(b) are proposed. If a communication is exempted from the definition of ''electioneering communication'' at 11 CFR 100.29, it would not be subject to the prohibition set forth at current section 114.2(b).

C. The WRTL II Exemption

Alternative 1—Proposed 11 CFR 114.15—Permissible Use of Corporate and Labor Organization Funds for Certain Electioneering Communications

The new exemption in proposed section 114.15 would only apply to certain types of communications that meet the current definition of ''electioneering communication'' in 11 CFR 100.29. Proposed paragraph (a) would set forth the general standard for determining whether the use of corporate and labor organization funds for an electioneering communication is permissible under *WRTL II*. Proposed paragraph (b) would include safe harbor provisions for two common types of communications: grassroots lobbying communications, and commercial or business advertisements. Proposed paragraph (c) would address reporting obligations for corporations and labor organizations that choose to use general treasury funds to pay for permissible electioneering communications.

Alternative 2—Proposed 11 CFR 100.29(c)(6)—Exemption From the Definition of ''Electioneering Communication''

The new exemption in proposed section 100.29(c)(6) would apply to certain types of communications that otherwise meet the current definition of ''electioneering communication'' in 11 CFR 100.29(a). Proposed paragraph (c)(6) would set forth the general standard for determining whether a communication is exempt from the definition of ''electioneering communication'' pursuant to *WRTL II*. Proposed paragraphs (c)(6)(i) and (ii) are identical to proposed section 114.15(b), and would include the same safe harbor provisions for two common types of communications: grassroots lobbying communications, and commercial or business advertisements. Alternative 2 does not include a paragraph that is equivalent to proposed section 114.15(c), because there would be no reporting requirements for communications that satisfy the proposed exemption.

Because the substantive requirements of the proposed *WRTL II* exemption and the included safe harbors would be the same under either Alternative 1 or 2, the following discussion applies equally to both alternatives.

1. Proposed 11 CFR 114.15(a) or 11 CFR 100.29(c)(6)—Articulation of the WRTL II Exemption

The Supreme Court in *WRTL II* held that the Act's prohibition on the use of corporate and labor organization funds to pay for electioneering communications is unconstitutional as applied to communications that are not the ''functional equivalent'' of express advocacy. *WRTL II*, 127 S. Ct. at 2659. Under *WRTL II*, ''an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'' *WRTL II*, 127 S. Ct. at 2667.

Under Alternative 1, proposed section 114.15(a) would provide that corporations and labor organizations may make an electioneering communication (as defined in 11 CFR 100.29) without violating the prohibition in section 114.2(b)(3), ''if the communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.'' Under Alternative 2, proposed section 100.29(c)(6) would provide that if the communication ''is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate,'' it is exempted from the definition of ''electioneering communication'' set forth at 11 CFR 100.29(a).

The proposed exemptions in the two alternatives would be objective, ''focusing on the substance of the communication rather than amorphous considerations of intent and effect.'' *WRTL II*, 127 S. Ct. at 2666. In determining whether a particular communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate, the Commission may consider ''basic background information that may be necessary to put an ad in context.'' *Id.* at 2669. According to the *WRTL II* opinion, this information could include whether a communication ''describes a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of such scrutiny in the near future.'' *Id.* (internal citation omitted). The Commission seeks comment on this approach. Should the Commission include in the Explanation and Justification or the rule itself a list of examples of information that would be included as ''basic background information''? What information beyond the ''four corners'' of the communication may the Commission consider as ''basic background information''? What examples should the Commission use?

The Commission proposes, under both alternatives, to supplement the general exemption with two safe harbors. The safe harbors are identical under both alternatives. The two safe harbors would focus on the content of the communication rather than its intent and effect. Satisfying one of the safe harbor provisions would demonstrate that the communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a Federal candidate. A communication that qualifies for one of the safe harbors would be deemed to satisfy the general exemption set forth in proposed section 114.15(a) or section 100.29(c)(6). However, a communication that does not qualify for either of the safe harbors may still come within the general exemption in proposed section 114.15(a) or section 100.29(c)(6).

The Commission seeks comment on the proposed approach of creating safe harbors in addition to a general exemption. Do safe harbor provisions based on categorical content-based requirements provide useful additional guidance to entities applying the general exemption, or is the general exemption sufficiently clear so that further guidance is unnecessary? Should the Commission, instead of, or in addition to, creating safe harbors, provide an exhaustive or non-exhaustive list of factors to be considered when determining whether a communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate? If the Commission

[6] To increase clarity and readability, the proposed rule would also revise the title of section 114.2 to include electioneering communications explicitly, and renumber paragraph (b)(2)(iii) as paragraph (b)(3) with conforming changes as necessary in the text of that paragraph.

provides a list of factors, should it include factors in addition to those listed in the proposed safe harbors and *WRTL II*? Are there any factors that could support a conclusion that a communication is *per se* the functional equivalent of express advocacy?

2. Proposed 11 CFR 114.15(b)(1) or 11 CFR 100.29(c)(6)(i)—Safe Harbor for Grassroots Lobbying Communications

Under both alternatives, proposed sections 114.15(b)(1) or 100.29(c)(6)(i) would establish identical safe harbors for grassroots lobbying communications based on *WRTL II's* analysis of the specific advertisements at issue in the case. The Supreme Court determined that WRTL's advertisements were not the ''functional equivalent of express advocacy'' because the communications' content was ''consistent with that of a genuine issue ad'' and the communications lacked ''indicia of express advocacy.'' *WRTL II*, 127 S. Ct. at 2667. The Supreme Court concluded that the content of the communications was ''consistent with that of a genuine issue ad'' because they focused on a legislative issue, took a position on the issue, exhorted the public to adopt the position, and urged the public to contact public officials with respect to the issue. *Id.* The Court found that the communications lacked ''indicia of express advocacy'' because they did not mention any election, candidacy, political party, or challenger, and the communications did not take positions on a candidate's character, qualifications, or fitness for office. *Id.*

Accordingly, the first two prongs of the proposed safe harbor for grassroots lobbying communications (proposed 11 CFR 114.15(b)(1)(i) and (ii) or 11 CFR 100.29(c)(6)(i)(A) and (B)) would incorporate the factors the Court used to determine whether a communication's content is ''consistent with that of a genuine issue ad.'' The third and fourth prongs (proposed 11 CFR 114.15(b)(1)(iii) and (iv) or 11 CFR 100.29(c)(6)(i)(C) and (D)) would incorporate the factors the Court used to determine whether a communication lacks ''indicia of express advocacy.'' A communication would qualify for the proposed safe harbor for grassroots lobbying communications only if it satisfies all four prongs. The Commission invites comment on whether a showing that the communication meets all four prongs (and all elements of each prong) should be required to come within the safe harbor. If not all elements or prongs are essential, how should the safe harbor be constructed? What is the relationship between the first two positive content prongs (discussing a pending legislative matter and urging a position on an officeholder or the public) and the last two negative or exclusionary prongs (not mentioning certain topics and not taking a position on certain issues)? Should the safe harbors be described only by the ''positive content prongs'' and the exclusionary factors be used as tests for the ''no other reasonable meaning'' portion of the general exemption in proposed section 114.15(a)? Should the grassroots lobbying communications safe harbor contain different requirements depending upon whether the Commission decides to implement the exemption in proposed section 114.15(a) or proposed section 100.29(c)(6)?

a. Proposed 11 CFR 114.15(b)(1)(i) or 11 CFR 100.29(c)(6)(i)(A)

The first prong of the safe harbor in proposed 11 CFR 114.15(b)(1)(i) or 11 CFR 100.29(c)(6)(i)(A) would be that the communication ''exclusively discusses a pending legislative or executive matter or issue.'' A ''pending legislative or executive matter or issue'' includes: a legislative proposal introduced in Congress as a bill or resolution, or a pending proposal that has not yet been formally introduced as a bill; the confirmation of a nominee; or the use of legislative procedures such as filibustering, cloture votes, or earmarking. The proposed safe harbor would also include communications discussing pending ''executive'' matters because Federal candidates who are officeholders in the executive branch of Federal, State or local government also may be lobbied to take action on matters involving public policy. In addition, this prong would include current and pending matters of public debate that engage Congress or the Executive Branch. In describing the legislative focus of the advertisement, the *WRTL II* opinion does not use the term ''exclusive.'' If an advertisement is ''exclusively'' about a legislative issue (as proposed in the rule), are the exclusionary factors (limiting other content) necessary?

The Commission is considering whether to include the following as examples of what would constitute a ''legislative or executive matter or issue'' under this proposed prong:

- A bill designated ''H.R.1'' or ''S.1'';
- An initiative or undertaking proposed by the President of the United States;
- An issue that rises to prominence through events occurring in the States, such as border control;
- An issue that is given prominence by a Supreme Court decision, such as eminent domain.

Should these examples appear in the Explanation and Justification that would accompany the final rule or should they be incorporated into the rule itself? Should this prong of the safe harbor be limited to pending State or local matters if the named Federal candidate is a State or local officeholder? Should further examples be added to the list or should some examples be removed from it? The safe harbor currently requires that a matter or issue be ''pending.'' How should the Commission determine whether a given matter or issue is ''pending?'' Should this requirement be removed, so that the safe harbor protects discussion of matters or issues, even if they are not ''pending?''

b. Proposed 11 CFR 114.15(b)(1)(ii) or 11 CFR 100.29(c)(6)(i)(B)

The second prong of the proposed safe harbor in proposed 11 CFR 114.15(b)(1)(ii) or 11 CFR 100.29(c)(6)(i)(B) would be that the communication ''urges an officeholder to take a particular position or action with respect to the matter or issue, or urges the public to adopt a particular position and to contact the officeholder with respect to the matter or issue.'' In addition to communications that urge the public to contact a public official (such as those in *WRTL II*), this requirement would also be met if the communication directly urges the officeholder to take a particular position or action regarding the legislative or executive matter or issue.

Communications discussing a Federal candidate who is not a Federal, State or local officeholder would not come within the proposed safe harbor. The Commission seeks comment on this approach. Should the safe harbor be so limited, or should communications discussing Federal candidates who are not officeholders also be eligible for the safe harbor? For example, could a communication that asks a Federal candidate who is not an officeholder to sign a pledge to support a particular issue if elected be reasonably construed as other than an appeal to vote for or against that candidate? Are there instances in which an entity has ''lobbied'' a Federal candidate to take a particular position or action once elected?

The Commission is also considering whether to include the following as examples of what would constitute exhortations to the officeholder under the proposed prong:

- ''Congressman Smith, vote yes on H.R.1.''

• ''The Association of Local Merchants calls on Governor Smith to Sign the Tax Reduction Act of 2006.''

• ''We urge President Smith to stand with America's workers and support expanded health care coverage.''

• ''Congressman Smith, vote for the President's health care initiative.''

Similarly, some examples of urging the general public to act under the proposed safe harbor would include the following:

• ''Call Congressman Smith at (202) 555–1234 and tell him to vote yes on H.R.1.''

• ''Write to Governor Smith at the address on the screen and ask him to sign the Tax Reduction Act of 2006.''

• Send President Smith an e-mail to tell him that you hope he will stand with America's workers and support expanded health care coverage. His e-mail address is *Mr.Smith@whitehouse.gov.*''

• ''Contact Congressman Smith and ask him to vote for the President's health care initiative [contact information on screen].''

Should these examples appear in the Explanation and Justification that would accompany the final rule or should they be incorporated into the rule itself? Should further examples be added to the list or should some examples be removed from it? Should an advertisement that urges the public to ''Call Congressman Smith and thank him for voting for H.R. 1'' satisfy this prong of the safe harbor?

The Commission seeks comment on whether the criteria for the safe harbor in proposed section 114.15(b)(1)(i) and (ii) or section 100.29(c)(6)(i)(A) and (B) accurately reflect the content of a ''genuine issue ad'' as noted by *WRTL II.* Should the Commission add further prongs to ensure that the content of the communication would be fully consistent with that of a grassroots lobbying communication?

c. Proposed 11 CFR 114.15(b)(1)(iii) or 11 CFR 100.29(c)(6)(i)(C)

The third prong of the proposed safe harbor in proposed 11 CFR 114.15(b)(1)(iii) or 11 CFR 100.29(c)(6)(i)(C) would be that the communication ''does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.'' The proposed prong would include ''voting by the general public'' in addition to the terms listed in the *WRTL II* decision as further indicia of express advocacy. For example, a communication would not meet this prong if it discussed a Federal candidate's position on certain pending legislative issues, but concluded with the tag line ''Vote. It's important to your future.'' Should references to voting by the general public in an election be included as additional indicia of express advocacy? Could communications that provide the address of campaign headquarters as an officeholder's contact information satisfy this prong of the proposed safe harbor under either alternative, or would such communications be considered to be referring to the officeholder's candidacy? Should only communications that provide contact information at the incumbent officeholder's Federal or State government office or a district office qualify for the proposed safe harbors?

The Commission invites comment on whether the following examples ''mention'' elections, candidacy, political parties or opposing candidates sufficient to transform a communication into the functional equivalent of express advocacy (if these factors are used to assess permissible electioneering communications) or to remove them from the proposed new safe harbors.

Elections

• Specific reference to a named election date, such as ''Support gun rights this November 5'' or ''Perform your civic duty November 5 to protect the environment.''

• Specific reference to elections in general, such as ''Remember to vote to preserve private property come election time.''

• Reference to election-related themes, such as pictures or text references to: (1) a ballot, (2) ballot box, (3) polls, (4) franchise, (5) suffrage.

Candidacy

• Specific description of named candidate and the election, such as ''Bob Jones is running for Senate;'' or ''Before Bob Jones ran for the House he never paid property taxes.''

• Specific description of named candidate, such as ''Tim Wirth has a right to run for Senate, but he doesn't have a right to * * *.'' [7]

• Specific reference to office or candidacy, such as ''Vote for liberty when picking your Senator!'' or ''There's an important choice for Senator this year.''

• Reference to candidacy by unique events or actions related to office, such as ''Remember the House Bank scandal? This November, let's do better.''

• Implied references to candidacy, such as: (1) Photo shots of candidate near Capitol; (2) candidate appears in mock-setting of government office; (3) other images reasonably suggesting candidacy.

Political party

• Specific reference to a recognized party, such as ''Democrats,'' ''Republicans,'' ''Libertarians,'' or ''Greens.''

• Reference to political parties by nickname or proxy description, ''Remember to support the GOP!'' or ''liberals in Congress;'' or ''the War party in Washington;'' or ''Support the party of Lincoln and Reagan;'' or graphics reasonably understood to reference the party (*e.g.* elephants or donkeys).

Opposing Candidate

• Reference to incumbent and opposing candidate, such as ''Bob Barry supports our troops; Bill Jones cut veterans' benefits by 20%.''

• Reference to incumbent, implying opposing candidate, such as ''It's time to take out the trash, select real change with Bob Barry.''

• Generic references to opposing candidate, such as an advertisement in which the opposing candidate appears as ''Rocky'' the prizefighter.

d. Proposed 11 CFR 114.15(b)(1)(iv) or 11 CFR 100.29(c)(6)(i)(D).

The final prong of the proposed safe harbor would state that the communication ''does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.'' *See* proposed 11 CFR 114.15(b)(1)(iv) or 11 CFR 100.29(c)(6)(i)(D). It may be argued, however, that effective lobbying may require reference to an officeholder's position or record on a particular issue. For example, an organization may find it difficult to convey its support for, or opposition to, an officeholder's prior position on a public policy issue unless that position is identified. Thus, a discussion of an officeholder's position on a public policy issue or legislative record may be consistent with the content of a genuine issue advertisement and may, therefore, not automatically render a communication ineligible for the proposed safe harbor. However, if a communication discusses an officeholder's past position on an issue in a way that implicates the officeholder's character, qualifications, or fitness for office, then the communication would not meet this prong of the proposed safe harbor. The Commission seeks comment on this approach. How should the Commission determine if an officeholder's past position on an issue is discussed in a way that implicates the officeholder's

[7] *See FEC* v. *Colorado Republican Federal Campaign Committee,* 59 F.3d 1015, 1018 n.1 (10th Cir. 1995), *rev'd,* 518 U.S. 604 (1996).

character, qualifications, or fitness for office?

In *McConnell,* the Supreme Court used a hypothetical ''Jane Doe'' advertisement as an example of the type of advertisements that would be subject to the electioneering communications rules. This hypothetical advertisement ''condemned Jane Doe's record on a particular issue before exhorting viewers to 'call Jane Doe and tell her what you think.'' ' *McConnell,* 540 U.S. at 127. The Justices in *WRTL II* disagreed as to whether this Jane Doe hypothetical would be considered ''susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'' *See* 127 S. Ct. at 2667 n.6 (Roberts, C.J.) (distinguishing the Jane Doe hypothetical from the WRTL advertisements); 127 S. Ct. at 2683 n.7 (Scalia, J.) (contending that the new exemption covers the Jane Doe hypothetical); 127 S. Ct. at 2698–99 (Souter, J.) (arguing that the WRTL advertisements are indistinguishable from the Jane Doe hypothetical). The Commission seeks comment on how an advertisement similar to the Jane Doe hypothetical should be treated under the proposed rule. If an advertisement merely condemns a candidate's record on an issue would it fail to satisfy the fourth prong of the safe harbor? Would such an advertisement also fail to meet the general exemption in proposed section 114.15(a) or 100.29(c)(6)? Would the outcome be different if the advertisement condemned a candidate's record but also included a discussion of the legislative issue itself? Does eligibility for the *WRTL II* exemption depend on the strength of the condemnation or on whether the condemnation is the sole or main content of the advertisement? Are there advertisements that describe issues in such inflammatory terms that merely to recite the candidate or officeholder's position is to comment on the individual's character, qualifications, or fitness for office? (*E.g.,* ''H.R. 6000 would legalize infanticide. Congressman Jones supports this bill. Call Congressman Jones and tell him to stop supporting baby killing and oppose H.R. 6000.'') Are there criteria the Commission could use to define such advertisements, or would any attempt by the Commission to devise such criteria risk impairing the speaker's ''autonomy to choose the content of his own message?'' *See WRTL II,* 127 S. Ct. at 2671 n.9.

The Commission invites comment on whether the following examples of statements about a candidate take a position on a candidate's ''character, qualifications, or fitness for office'' sufficient to transform a communication into the functional equivalent of express advocacy.

- The candidate is acting from an improper motive: favoring special interests, or specific interests for improper or insufficient reasons.
- Defamatory statements about the candidate.
- The candidate is failing to adhere to standards of a profession, trade or office.
- The candidate is failing to abide by religious convictions.
- The candidate is failing to fulfill family, personal, civil or legal obligations or duties (*e.g.* divorce proceedings, family law matters, fidelity, bankruptcy, medical or professional malpractice proceedings, sexual harassment or employment-related litigation).
- Allegations that the candidate has violated a law or ordinance.
- The candidate has poor performance in job or school (based on official work/academic record or based on peer judgment of candidate's school and work record).
- Allegations that the candidate misrepresented his own record or accomplishments.
- Negative characterizations of a candidate's vote, voting record or position on an issue, such as ''Congressman Rogers has the worst environmental voting record in the Calizona Congressional delegation.''
- Peer's recollection of candidate's reputation (*e.g.* ''hardworking,'' ''scandalous,'' ''faithful public servant,'' ''philanderer,'' ''tenacious'').
- The candidate's untruthfulness or untrustworthiness, truthfulness or reliability.
- The candidate's patriotism or lack thereof.
- The candidate's sound judgment or lack thereof.
- The candidate's effectiveness in politics or professional endeavors (receipt of awards or recognition).
- The candidate's history or absence of public, military, or community service.
- The candidate's loyalty to political party.
- The candidate's service to constituents.
- Demonstration of the candidate's knowledge of requisite topics.
- Medical, psychological or mental fitness of the candidate: Is the candidate in good medical standing for public service?

e. Examples.

The Commission is considering whether to include in the rule or the Explanation and Justification for the final rule examples of communications that would, and would not, satisfy the four prongs of the safe harbor for grassroots lobbying communications. These examples are drawn from actual communications evaluated by the courts in electioneering communications cases. The Commission is also considering whether to provide, in the rule or the Explanation and Justification for the final rule, examples of communications that would be the functional equivalent of express advocacy under the general exemption in proposed section 114.15(a) or section 100.29(c)(6). The Commission seeks comment on whether such examples should be provided, and what types of communications would be appropriate examples.

The following examples are illustrative only and are not intended to create a requirement for any particular words or phrases that must be included for a communication to qualify for the safe harbor. The Commission seeks comment on the application of the proposed safe harbor to these examples, and asks whether further examples would be helpful.

Example 1

LOAN OFFICER: Welcome Mr. and Mrs. Shulman. We've reviewed your loan application, along with your credit report, the appraisal on the house, the inspections, and well * * *

COUPLE: Yes, yes * * * we're listening.

OFFICER: Well, it all reminds me of a time I went fishing with my father. We were on the Wolf River Waupaca * * *

VOICE-OVER: Sometimes it's just not fair to delay an important decision.

But in Washington, it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple ''yes'' or ''no'' vote. So qualified candidates aren't getting a chance to serve.

It's politics at work, causing gridlock and backing up some of our courts to a state of emergency.

Contact Senators Feingold and Kohl and tell them to oppose the filibuster.

Visit: BeFair.org

Paid for by Wisconsin Right to Life (befair.org), which is responsible for the content of this advertising and not authorized by any candidate or candidate's committee.[8]

This communication would come within the proposed safe harbor in either of the two alternatives. Its content is consistent with that of a genuine issue advertisement because it focuses exclusively on the pending legislative matter of Senate filibuster votes on judicial nominees (proposed section 114.15(b)(1)(i) or section 100.29(c)(6)(i)(A)), and urges viewers to

[8] ''Loan,'' *Wisconsin Right to Life, Inc.* v. *FEC*, 466 F. Supp. 2d 195, 198 n.4 (D.D.C. 2006). The Supreme Court held that this advertisement was not the ''functional equivalent of express advocacy. *WRTL II,* .127 S. Ct at 2670.

contact Senators Feingold and Kohl to take a position with respect to the filibuster issue (proposed section 114.15(b)(1)(ii) or section 100.29(c)(6)(i)(B)). Further, the communication does not contain indicia of express advocacy: it does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (proposed section 114.15(b)(1)(iii) or section 100.29(c)(6)(i)(C)), and it does not take a position on the character, qualifications, or fitness for office of Senators Feingold or Kohl (proposed section 114.15(b)(1)(iv) or section 100.29(c)(6)(i)(D)).

Example 2

Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But ''her nose was not broken.'' He talks law and order * * * but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.[9]

This communication fails to satisfy the proposed safe harbor in either of the two alternatives in several ways. Although the advertisement mentions a past vote against child support enforcement, the communication does not exclusively discuss a pending legislative matter or issue. Instead, it discusses the candidate's own personal and legal history. Similarly, the exhortation, ''Tell him to support family values,'' does not urge the public to tell Yellowtail to take a specific position or action with respect to a pending legislative matter or issue. Therefore, the communication's content is not consistent with that of a genuine issue advertisement. Further, the communication attacks Bill Yellowtail's character by referring to alleged actions he took against his spouse, his delinquent child-support payments, and his past felony conviction (proposed 114.15(b)(1)(iv) or section 100.29(c)(6)(i)(D)). Thus, the communication also contains indicia of express advocacy.

If the Commission decides to provide examples of communications that would be the functional equivalent of express advocacy under the general exemption in proposed section 114.15(a) or section 100.29(c)(6), would the Yellowtail advertisement be an appropriate example? What considerations would support a conclusion that this communication is susceptible of no reasonable interpretation other than as an appeal to vote against Bill Yellowtail? If this communication is not the functional equivalent of express advocacy, of what reasonable interpretation other than as an appeal to vote against Bill Yellowtail is the communication susceptible?

Example 3

Our country stands at the crossroads—at the intersection of how marriage will be defined for future generations. Marriage between a man and a woman has been challenged across this country and could be declared unconstitutional at any time by rogue judges. We must safeguard the traditional definition of marriage by putting it beyond the reach of all judges—by writing it into the U.S. Constitution. Unfortunately, your senators voted against the Marriage Protection Amendment two years ago. Please call Sens. Snowe and Collins immediately and urge them to support the Marriage Protection Amendment when it comes to a vote in early June. Call the Capitol switchboard at 202–224–3121 and ask for your senators. Again, that's 202–224–3121. Thank you for making your voice heard.

Paid for by the Christian Civic League of Maine, which is responsible for the content of this advertising and not authorized by any candidate or candidate's committee.[10]

This communication would come within the proposed safe harbor in either of the two alternatives. Its content exclusively focuses on the pending legislative matter of the Marriage Protection Amendment (proposed 114.15(b)(1)(i) or section 100.29(c)(6)(i)(A)), and urges viewers to contact Senators Snowe and Collins to urge them to support this pending legislation (proposed 114.15(b)(1)(ii) or section 100.29(c)(6)(i)(B)). This communication does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (proposed 114.15(b)(1)(iii) or section 100.29(c)(6)(i)(C)). In contrast to Example 2 above, this communication criticizes the Senators' past voting records only as part of a broader discussion of particular legislation, and it does not include or function as an attack on their personal character, qualifications, or fitness for office (proposed 114.15(b)(1)(iv) or section 100.29(c)(6)(i)(D)). Therefore, this communication does not include indicia of express advocacy.

Example 4

It's our land; our water. America's environment must be protected. But in just 18 months, Congressman Ganske has voted 12 out of 12 times to weaken environmental protections. Congressman Ganske even voted to let corporations continue releasing cancer-causing pollutants into our air. Congressman Ganske voted for the big corporations who lobbied these bills and gave him thousands of dollars in contributions. Call Congressman Ganske. Tell him to protect America's environment. For our families. For our future.[11]

The Commission seeks comment on whether this communication should come within the proposed safe harbor in either of the two alternatives. Does its content exclusively discuss a pending legislative or executive matter or issue (proposed 114.15(b)(1)(i) or section 100.29(c)(6)(i)(A))? Does the sentence ''Tell him to protect America's environment'' urge Congressman Ganske to take a particular position or action with respect to the matter or issue? Does the sentence ''Congressman Ganske even voted to let corporations continue releasing cancer-causing pollutants into our air'' discuss a past voting record as part of a broader discussion of a particular matter or issue, or does it serve to function as an attack on Congressman Ganske's character, qualifications, or fitness for office? If the sentence serves both purposes, should the advertisement come within the safe harbor? Does the sentence, ''Congressman Ganske voted for the big corporations who lobbied these bills and gave him thousands of dollars in contributions,'' function as an attack on Congressman Ganske's character, qualifications, or fitness for office (proposed 114.15(b)(1)(iv) or section 100.29(c)(6)(i)(D))? If this sentence is removed, does that change the analysis? If the communication does not fall within the safe harbor, does the communication fall within the general exemption in proposed section 114.15(a) or section 100.29(c)(6)? If the sentence regarding corporate contributions is removed, does the communication fall within the general exemption?

Example 5

What's important to America's families? [middle-aged man, interview style]: ''My pension is very important because it will provide a significant amount of my income when I retire.'' And where do the candidates

[9] ''Bill Yellowtail,'' *McConnell* v. *FEC*, 540 U.S. 93, 193 n.78 (2003). The Court noted that this advertisement was ''clearly intended to influence the election.'' *Id.*

[10] ''Crossroads,'' Verified Complaint for Declaratory and Injunctive Relief, Exhibit A (Apr. 3, 2006), *Civic Christian League of Maine* v. *FEC*, 443 F. Supp. 2d 81 (D.D.C. 2006) (No. 06–0614), *available at http://www.fec.gov/law/litigation/christian_civic_league_complaint.pdf*. The Commission filed a joint motion asking the Court to hold this advertisement meets the *WRTL II* exemption. *See* ''Joint Motion'' (July 13, 2007), *Civic Christian League of Maine* v. *FEC*, (No. 06–0614).

[11] *See McConnell* v. *FEC*, 251 F. Supp. 2d 176, 876 (D.D.C. 2003) (Leon, J.), *available at http://www.fec.gov/pages/bcra/mem_opinion_leon.pdf*.

stand? Congressman Charlie Bass voted to make it easier for corporations to convert employee pension funds to other uses. Arnie Arnesen supports the ''Golden Trust Fund'' legislation that would preserve pension funds for retirees. When it comes to your pension, there is a difference. Call or visit our website to find out more.[12]

The Commission seeks comment on whether this communication should come within the proposed safe harbor in either of the two alternatives. Does its content exclusively discuss a pending legislative or executive matter or issue (proposed 114.15(b)(1)(i) or section 100.29(c)(6)(i)(A))? Does it contain an adequate call to action (proposed 114.15(b)(1)(ii) or section 100.29(c)(6)(i)(B))? If the phrase ''Call or visit our website to find out more'' is replaced with ''Contact Congressman Bass and tell him to support the Golden Trust Fund legislation,'' does that change the analysis? Does the reference to two candidates competing for the same office constitute a reference to an ''opposing candidate'' (proposed section 114.15(b)(1)(iii) or 100.29(c)(6)(i)(C))? If the communication does not come within the safe harbor, does the communication fall within the general exemption in proposed section 114.15(a) or section 100.29(c)(6)?

Example 6

TOM KEAN, JR.

No experience. Hasn't lived in New Jersey for 10 years. It takes more than a name to get things done.

NEVER. Never worked in New Jersey. Never ran for office. Never held a job in the private sector. Never paid New Jersey property taxes. Tom Kean, Jr. may be a nice young man and you may have liked his dad a lot—but he needs more experience dealing with local issues and concerns. For the last 5 years he has lived in Boston while attending college. Before that, he lived in Washington. New Jersey faces some tough issues. We can't afford on-the-job training. Tell Tom Kean, Jr. * * * New Jersey needs New Jersey leaders.

Example 7

[Superimposed over a photograph of Mr. Kean wearing a campaign button]

For the last 5 years Tom Kean, Jr. has lived in Massachusetts. Before that, he lived in Washington, D.C. And all the time Tom Kean lived in Massachusetts and Washington, he never held a job in the private sector. And until he decided to run for Congress—Tom never paid property taxes. No experience. TOM KEAN MOVED TO NEW JERSEY TO RUN FOR CONGRESS. New Jersey faces some difficult problems. Improving schools, keeping taxes down, fighting overdevelopment and congestion. Pat Morrisey has experience dealing with important issues. It takes more than a name to get things done. Tell Tom Kean, Jr. * * * NEW JERSEY NEEDS NEW JERSEY LEADERS.[13]

The Commission seeks comment on whether these two advertisements constitute the functional equivalent of express advocacy under either alternative. The Commission previously found reason to believe that both advertisements constituted express advocacy based on *McConnell.* Does the *WRTL II* decision change or strengthen that finding, given that both these advertisements comment on a candidate's qualifications or fitness for office?

3. Proposed 11 CFR 114.15(b)(2) and 11 CFR 100.29(c)(6)(ii)—Safe Harbor for Commercial and Business Advertisements

Under *WRTL II*, corporations and labor organizations may not be prohibited from funding an electioneering communication unless that communication is the functional equivalent of express advocacy, meaning that it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate. The Court found that the advertisements at issue in *WRTL II* were not the functional equivalent of express advocacy because they could be reasonably viewed as issue advocacy. However, issue advocacy is not the only conceivable non-electoral ''reasonable interpretation'' to which a communication might be susceptible. For example, the Commission has in several instances applied the Act and Commission regulations to communications that advertise a business or a product.[14] Because some communications that meet the definition of ''electioneering communication'' could reasonably be interpreted as having a non-electoral, business or commercial purpose, the Commission is proposing a safe harbor for business and commercial advertisements.

The Commission seeks comment on this approach. Is the holding in *WRTL II* limited in application to communications that contain issue advocacy or grassroots lobbying, or does the holding extend to other types of communications such as business and commercial advertisements? *See Cent. Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980) (refusing to apply strict scrutiny First Amendment analysis to commercial advertisements, instead using four-part intermediate scrutiny test); *44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484 (1996); *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525 (2001) (same). The Supreme Court in Buckley stated: ''The First Amendment affords the broadest protection to such political expression in order 'to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' '' *Buckley*, 424 U.S. at 14 (quoting *Roth* v. *United States*, 354 U.S. 476, 484 (1957)). Does *WRTL II* modify the long-standing jurisprudence that commercial speech is entitled to less Constitutional protection than political speech? The *WRTL II* decision addressed commercial speech, stating:

> At the outset, we reject the contention that issue advocacy may be regulated because express election advocacy may be, and ''the speech involved in so-called issue advocacy is [not] any more core political speech than are words of express advocacy.'' *McConnell, supra*, at 205. This greater-includes-the-lesser approach is not how strict scrutiny works. A corporate ad expressing support for the local football team could not be regulated on the ground that such speech is less ''core'' than corporate speech about an election, which we have held may be restricted. A court applying strict scrutiny must ensure that a compelling interest supports each application of a statute restricting speech. That a compelling interest justifies restrictions on express advocacy tells us little about whether a compelling interest justifies restrictions on issue advocacy; the *McConnell* Court itself made just that point. *See* 540 U. S., at 206, n. 88. Such a greater-includes-the-lesser argument would dictate that virtually all corporate speech can be suppressed, since few kinds of speech can lay claim to being as central to the First Amendment as campaign speech. That conclusion is clearly foreclosed by our precedent. *See, e.g., Bellotti,* supra, at 776–777.

WRTL II, 127 S. Ct. at 2671–72.

The safe harbor in both alternatives would employ the same two-step approach that the Court used in *WRTL II* to determine whether a communication is a ''genuine issue ad.'' The first two prongs of the safe harbor

[12] Adapted from *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 918 (D.D.C. 2003) (Leon, J.), *available at http://www.fec.gov/pages/bcra/mem_opinion_leon.pdf.*

[13] MUR 5024R, Factual and Legal Analysis for Council for Responsible Government, Inc. and its Accountability Project; Gary Glenn; William ''Bill'' Wilson, at 8–9 (approved by the Commission on April 11, 2005), available at *http://eqs.nictusa.com/eqsdocs/00004C5E.pdf.* The Commission did not analyze the advertisements in Examples 6 and 7 with regard to the electioneering communications provisions because the advertisements appeared in printed flyers in an election held before BCRA was enacted. The application of the proposed exemption and safe harbor assumes that the examples are distributed as a broadcast advertisement.

[14] *See, e.g.*, Advisory Opinions (''AOs'') 2004–31 (Darrow), 2004–30 (Citizens United), and 2004–15 (Hardy); Matters under Review (''MURs'') 5467 (Michael Moore) and 5410 (Oberweis Dairy, *et al.*). *See also Notice of Availability of Rulemaking Petition: Exception for the Promotion of Political Documentary Films from ''Electioneering Communications,''* 69 FR 52461 (Aug. 26, 2004).

would ensure that the content of the communication is fully consistent with that of a genuine commercial advertisement, based on the Commission's experience applying the electioneering communications rule to commercial advertising in the past two election cycles. *See* proposed 11 CFR 114.15(b)(2)(i) and (ii) or proposed 11 CFR 100.29(c)(6)(ii)(A) and (B). The third and fourth prongs would incorporate the factors the *WRTL II* Court used to determine whether a communication lacks ''indicia of express advocacy.'' *See* proposed 11 CFR 114.15(b)(2)(iii) and (iv) and proposed section 100.29(c)(6)(ii)(C) and (D). A communication would qualify for the proposed safe harbor for genuine business advertisements only if it satisfies all four prongs. The Commission seeks comment on whether it is appropriate to include a proposed safe harbor for commercial advertisements. If so, are the proposed prongs appropriate? Should the commercial advertisements safe harbors contain different requirements depending upon whether the Commission decides to implement the exemption in proposed section 114.15(a) or proposed section 100.29(c)(6)?

As discussed above, a communication that qualifies for the proposed new safe harbor may still be a ''coordinated communication'' if it satisfies the content and conduct prongs in section 109.21. Thus, exempt communications made by corporations or labor organizations may still be prohibited in-kind contributions as ''coordinated communications.'' The Commission seeks comment on the effects of the commercial safe harbor on the coordinated communication rule.

a. Proposed 11 CFR 114.15(b)(2)(i) or 100.29(c)(6)(ii)(A)

The first prong of this proposed safe harbor in proposed 11 CFR 114.15(b)(2)(i) or 100.29(c)(6)(ii)(A) would be that the communication ''exclusively advertises a Federal candidate's or officeholder's business or professional practice or any other product or service.'' This prong would be satisfied both by advertisements in which a Federal candidate or officeholder appears to promote a business, product for sale, or other commercial service, and by advertisements in which a Federal candidate or officeholder is referred to as the subject of a book or movie. This prong would apply to businesses owned or operated by, or employing, the candidate or officeholder, and publishers, distributors or promoters of books, films or plays that refer to the candidate or officeholder.

b. Proposed 11 CFR 114.15(b)(2)(ii) or 100.29(c)(6)(ii)(B)

The second prong of the proposed safe harbor in proposed 11 CFR 114.15(b)(2)(ii) or 100.29(c)(6)(ii)(B) would be that the communication ''is made in the ordinary course of business of the entity paying for the communication.'' For example, a restaurant owned by a Federal candidate could use its corporate general treasury funds to pay for advertisements featuring the owner/candidate. Similarly, an incorporated publisher or distributor of a book about a Federal candidate would be able to pay for an advertisement for that book. How should the Commission determine what constitutes an entity's ''ordinary course of business''? Should the Commission review the advertising history or advertising patterns of the entity paying for the communication in order to evaluate this prong of the safe harbor? If the entity in question is a newly established business, should the fact that it has never before distributed broadcast advertisements indicate that it is not operating in the ''ordinary course of business''?

c. Proposed 11 CFR 114.15(b)(2)(iii) and (iv) or 100.29(c)(6)(ii)(C) and (D)

The third and fourth prongs of the proposed safe harbor for commercial and business advertisements (proposed sections 114.15(b)(2)(iii) and (iv) or sections 100.29(c)(6)(ii)(C) and (D)) would be identical to prongs three and four of the proposed safe harbor for grassroots lobbying communications in both alternatives. Accordingly, a commercial or business advertisement would qualify for the safe harbor only if it ''does not mention any election, candidacy, political party, opposing candidate, or voting by the general public'' and ''does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.'' *See* proposed 11 CFR 114.15(b)(2)(iii) and (iv) or 11 CFR 100.29(c)(6)(ii)(C) and (D).

d. Example

The Commission is considering whether to include in the Explanation and Justification examples of communications that would satisfy all four prongs of the safe harbor for commercial and business advertisements. The following example is based on an actual communication in a past advisory opinion request. It is illustrative only and is not intended to create a requirement for any particular words or phrases that must be included for a communication to qualify for the safe harbor. The Commission seeks comment on this example and asks whether further examples would be helpful.

[VOICE OVER SPEAKING WHILE SHOWING VARIOUS FOOTAGE OF DEALERSHIP]: Cadillac. Style. luxury. Visit Joe Smith Cadillac in Waukesha. Where we uphold the Cadillac legacy of style, luxury and performance everyday. At Joe Smith Cadillac, you'll find a huge selection of Cadillacs and receive award-winning service every time you bring your Cadillac in. Whether you're in the market for a classic sedan or SUV, you can be sure Joe Smith Cadillac has it. And while shopping for your Cadillac, a single detail won't be missed. We know the importance of taking care of our customers. That's why you'll always find incredible service specials to help to maintain your Cadillac. When it comes to care for your Cadillac, you shouldn't settle for anything less than the best. We're Wisconsin's all-time sales leader and we want to be your Cadillac dealership.

[VOICE OVER SPEAKING WHILE VIDEO OF INSIDE DEALERSHIP ZOOMS IN ON FRAMED PICTURE ON WALL OF JOE SMITH]: Stop into Joe Smith Cadillac, on Highway 18 in Waukesha, and see what Cadillac style really is all about.[15]

This communication could satisfy the proposed safe harbor in either alternative.[16] The communication advertises a business owned by candidate Joe Smith (proposed section 114.15(b)(2)(i) or section 100.29(c)(6)(ii)(A)). Assuming the communication was paid for in the ordinary course of business by a car dealership to advertise its business, it would satisfy proposed section 114.15(b)(2)(ii) or section 100.29(c)(6)(ii)(B). Finally, the communication does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (proposed section 114.15(b)(2)(iii) or section 100.29(c)(6)(ii)(C)), and it does not take a position on the candidate's character, qualifications, or fitness for office (proposed section 114.15(b)(2)(iv) or section 100.29(c)(6)(ii)(D)).

4. Other Types of Communications

Are there other common categories of broadcast communication that often involve Federal candidates, yet would

[15] This example is drawn from one of the advertisements in AO 2004–31 (Darrow), Attachment A at 3 (Sept. 10, 2004), in which the Commission found that under the particular facts of this advisory opinion, the advertisements did not meet the definition of ''electioneering communication'' because the use of the name ''Russ Darrow'' referred to a business or another individual (in this case, the candidate's son) who was not a Federal candidate.

[16] As discussed above, even if the advertisement qualifies for the safe harbor for commercial advertisements, the advertisement could still implicate the coordinated communication rules.

be reasonably interpreted as something other than as an appeal to vote, such as public service announcements or promotions of charities or charitable events? [17] Do other categories of communication warrant safe harbors similar to those proposed for lobbying and commercial communications? What elements would such a safe harbor contain?

D. Reporting Requirements for Electioneering Communications Under Alternative 1

Any person that has made electioneering communications aggregating in excess of $10,000 in a calendar year must file a statement that discloses, *inter alia*, the names and addresses of each donor who donated an amount aggregating $1,000 or more during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. *See* 2 U.S.C. 434(f)(1)–(2); 11 CFR 104.20(b)–(c). However, the Act and Commission regulations provide the option that persons making electioneering communications may create a segregated bank account for funding electioneering communications in order to limit reporting to the donors for that account. *See* 2 U.S.C. 434(f)(2)(E); 11 CFR 104.20(c)(7). The segregated bank account may only include funds contributed by individuals who are U.S. citizens or nationals, or permanent residents. *Id*. If a person does not create a segregated bank account and funds electioneering communications from its general account, that person must disclose *all* donors of over $1,000 to the entity during the current and preceding calendar year. *See* 2 U.S.C. 434(f)(2)(F); 11 CFR 104.20(c)(8). Moreover, persons that do not use a segregated bank account must be able to demonstrate through a reasonable accounting method that no corporate or labor organization's funds were used to pay any portion of an electioneering communication. *See* 11 CFR 114.14(d)(1).

The Commission is proposing to revise its rules on reporting and establishing segregated bank accounts for electioneering communications to accommodate reporting by corporations and labor organizations that choose to make electioneering communications that are permissible under proposed section 114.15.

1. Proposed 11 CFR 114.15(c)—Corporate and Labor Organization Reporting Requirement

Proposed section 114.15(c) would provide that corporations and labor organizations that make electioneering communications permissible under the *WRTL II* exemption in proposed section 114.15(a) totaling over $10,000 in a calendar year must file reports like other entities that make electioneering communications. This proposed section would include a cross reference to the electioneering communications reporting requirements in 11 CFR 104.20.

2. Proposed Revisions to 11 CFR 104.20 and 114.14—Using Segregated Bank Accounts For Electioneering Communications

Current section 104.20(c)(7) only addresses segregated bank accounts containing funds solely from individuals who are ''United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20).'' These provisions would continue to be applicable to a segregated bank account used to pay for any electioneering communications that do not come within the new *WRTL II* exemption under proposed 11 CFR 114.15. However, a new provision may be needed regarding reporting the receipt of corporate or labor organization funds to pay for electioneering communications coming under the new *WRTL II* exemption in proposed section 114.15.

Accordingly, the Commission proposes to divide paragraph 104.20(c)(7) into paragraphs (c)(7)(i) and (c)(7)(ii). Paragraph (c)(7)(i) would address the segregated bank account used to pay for electioneering communications that would not come under new 11 CFR 114.15. It would follow current paragraph (c)(7) by barring corporations and labor organizations from donating to such an account. In contrast, paragraph (c)(7)(ii) would permit a segregated bank account to be used to pay for electioneering communications that are permissible under the new *WRTL II* exemption in 11 CFR 114.15. This second type of account could contain corporate and labor organization funds. The Commission is not proposing revisions to paragraph (c)(8), which provides for the reporting of ''donors'' when electioneering communications are not made using a segregated bank account.

Under the proposed regulations, how would a corporation or labor organization report an electioneering communication funded with general treasury funds? If the corporation or labor organization does not pay for the electioneering communication from an account described in proposed sections 104.20(c)(7)(ii) and 114.14(d)(2)(i), would the corporation or labor organization be required to report ''the name and address of each donor who donated an amount aggregating $1,000 or more'' to the corporation or labor organization during the relevant reporting period, as required by 2 U.S.C. 434(f)(2)(F) and 11 CFR 104.20(c)(8)? If so, how would a corporation or labor organization determine which receipts qualify as ''donations''? Should the Commission limit the ''donation'' reporting requirement to funds that are donated for the express purpose of making electioneering communications?

Additionally, the Commission proposes to make conforming changes to 11 CFR 114.14(d)(2), which applies to the use of segregated bank accounts by persons that receive funds from corporations or labor organizations. Section 114.14(d)(2) would be divided into two paragraphs consistent with the proposed changes to section 104.20(c)(7). Paragraph (d)(2)(i) would allow any person (including corporations and labor organizations) wishing to make electioneering communications permissible under 11 CFR 114.15 to establish a segregated bank account for that exclusive purpose, and to limit reporting to donations to that account. In this circumstance, a corporation or labor organization that established such an account would report only donations made to the account for the purpose of electioneering communications, pursuant to 11 CFR 104.20(c)(7)(ii). Paragraph (d)(2)(ii) would continue to allow persons (other than corporations and labor organizations) to establish a segregated bank account to be used to exclusively pay for electioneering communications that do not come under the new exception in proposed 11 CFR 114.15. New paragraph (d)(2)(i) contains the same allowances and restrictions as old paragraph (d)(2), but clarifies that this option is not available to corporations and labor organizations.

The Commission believes that if organizations intend to make some electioneering communications that comply with the new *WRTL II* exemption and other electioneering communications that do not, or might not, come within the exemption, they would be well-advised to establish two separate bank accounts to ensure that corporate and labor organization funds are only accepted and used to fund exempt electioneering communications.

[17] See, for example, the communications at issue in AO 2006–10 (EchoStar) and AO 2004–14 (Davis).

Please note, however, that separate bank accounts would not be mandatory because organizations need only show that they used a reasonable accounting method to separate corporate and labor organization funds under 11 CFR 114.14(d)(1).[18] The Commission seeks comment on this approach.

E. Reporting Requirements for Electioneering Communications Under Alternative 2

Under Alternative 2, a communication that qualifies for the *WRTL II* exemption in proposed section 100.29(c)(6) would be exempted from the definition of ''electioneering communication.'' Provisions of the Commission's regulations imposing reporting requirements on persons making ''electioneering communications'' are inapplicable where the communication is exempted from the definition of ''electioneering communication.'' Under Alternative 2, the reporting requirements applicable to all communications that continue to meet the definition of ''electioneering communication'' would remain unchanged.

F. Revisions to Other Provisions Under Alternative 1

1. Proposed Revisions to 11 CFR 114.4—Communications Beyond the Restricted Class

Section 114.4(c) sets out the types of communications that corporations and labor organizations may make either to the general public or to all employees and members. Such communications include registration and voting communications, official registration and voting information, voting records, and voting guides. Alternative 1 proposes adding new paragraph (c)(8) to state that any corporation or labor organization may make electioneering communications to the general public that fall within the new exemption in proposed section 11 CFR 114.15. Proposed paragraph (c)(8) would also make clear that QNCs may make electioneering communications regardless of whether they are permissible under 11 CFR 114.15. The Commission is not proposing any changes to its regulations concerning QNCs at section 114.10.[19]

2. Proposed Revisions to 11 CFR 114.14—Further Restrictions on the Use of Corporate and Labor Organization Funds for Electioneering Communications

Current section 114.14 prohibits corporations and labor organizations from providing general treasury funds to pay for any electioneering communications whatsoever. The Commission's proposed revisions to this section under Alternative 1 would limit this prohibition to electioneering communications that do not come within the new *WRTL II* exemption in proposed section 114.15, consistent with the proposed changes to the general prohibition on the use of corporate and labor organizations funds in section 114.2.

Current paragraph (a)(1) of this section contains a general ban on corporations and labor organizations providing funds to any other person for the purpose of financing an electioneering communication. Likewise, current paragraphs (b)(1) and (2) of this section prohibit persons that accept funds from corporations and labor organizations from using those funds to pay for electioneering communications, or from providing those same funds to any other person for the purpose of paying for an electioneering communication. Current paragraph (d)(1) of this section requires any person that receives funds from corporations and labor organizations, and that makes electioneering communications, to demonstrate by a reasonable accounting method that no corporate or labor organization funds were used to pay for the electioneering communication.

The proposed rule would modify paragraphs (a)(1), (b)(1) and (2), and (d)(1) by adding the phrase ''that is not permissible under 11 CFR 114.15'' after the word ''communication'' in each paragraph. These proposed changes would implement *WRTL II* by limiting the prohibition on the use of corporate and labor organization funds to those electioneering communications that are the functional equivalent of express advocacy, and therefore would not be permissible under proposed new 11 CFR 114.15. Paragraph (d)(1) would be further revised by adding the phrase ''other than corporations and labor organizations'' after the word ''Persons.'' The Commission is proposing this change to avoid any suggestion that corporations and labor organizations may make electioneering communications that do not come within the new exception articulated in *WRTL II.* The Commission seeks comment on this approach.

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

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected would not feel a significant economic impact from the proposed rule. Overall, the proposed rules would relieve a funding restriction that the current rules place on corporations and labor organizations and would therefore have a positive economic impact for any affected small entities. The proposed rules would allow small entities to engage in activity they were previously prohibited from funding with corporation or labor organization funding. Moreover, this activity (making and funding electioneering communications) is entirely voluntary, and any reporting obligations would only be triggered based on entities choosing to engage in this activity above a threshold of $10,000 per calendar year.

In addition, there are few ''small entities'' that would be affected by these proposed rules. The Commission's proposed revisions could affect for-profit corporations, labor organizations, individuals and some non-profit organizations. Individuals and labor organizations are not ''small entities'' under 5 U.S.C. 601(6), and most, if not all, for-profit corporations that would be affected by the proposed rule are not ''small businesses'' under 5 U.S.C. 601(3). Large national and state-wide non-profit organizations that might produce electioneering communications are not ''small organizations'' under 5 U.S.C. 601(4) because they are not independently owned and operated and they are dominant in their field. In addition, the factual record developed by the Commission in past electioneering proceedings indicates that few, if any, section 501(c)(3) non-profit organizations make broadcast, cable or satellite communications that refer to Federal candidates during the electioneering communication time frames to the targeted audience.

List of Subjects

11 CFR Part 100

Elections.

[18] Upon issuance of final rules, the Commission intends to review FEC Form 9 to ensure that it conforms to whatever changes are contained in the final rules.

[19] The Commission is also proposing a conforming change to paragraph 114.4(c)(1). The statement listing the paragraphs that describe communications that corporations and labor organizations may make to the general public would be amended to include paragraph 114.4(c)(8).

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

Alternative 1

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

1. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

2. In § 104.20, paragraph (c)(7) would be revised to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

* * * * *

(c) * * *

(7) (i) If the disbursements were paid exclusively from a segregated bank account established to pay for electioneering communications not permissible under 11 CFR 114.15, consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; or

(ii) If the disbursements were paid exclusively from a segregated bank account established to pay for electioneering communications permissible under 11 CFR 114.15, the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

4. In § 114.2, the section heading and paragraph (b)(2) would be revised and paragraph (b)(3) would be added to read as follows:

§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.

* * * * *

(b) * * *

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR part 100, subpart D; or

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party.

(3) Except as provided at 11 CFR 114.10 and 114.15, corporations and labor organizations are prohibited from making payments for an electioneering communication to those outside the restricted class. However, this paragraph (b)(3) shall not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that:

(i) The committee is not a political committee as defined in 11 CFR 100.5;

(ii) The committee incorporated for liability purposes only;

(iii) The committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and

(iv) The committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

* * * * *

5. In § 114.4, paragraph (c)(1) would be amended by adding the phrase ''and (c)(8)'' after ''(c)(5),'' and paragraph (c)(8) would be added as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) * * *

(8) *Electioneering communications.* Any corporation or labor organization may make electioneering communications to the general public that are permissible under 11 CFR 114.15. Qualified nonprofit corporations, as defined in 11 CFR 114.10(c), may make electioneering communications in accordance with 11 CFR 114.10(d), regardless of whether they are permissible under 11 CFR 114.15.

* * * * *

6. In § 114.14, paragraphs (a), (b) and (d) would be revised to read as follows:

§ 114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

(a)(1) Corporations and labor organizations shall not give, disburse, donate or otherwise provide funds, the purpose of which is to pay for an electioneering communication that is not permissible under 11 CFR 114.15, to any other person.

(2) A corporation or labor organization shall be deemed to have given, disbursed, donated, or otherwise provided funds under paragraph (a)(1) of this section if the corporation or labor organization knows, has reason to know, or willfully blinds itself to the fact, that the person to whom the funds are given, disbursed, donated, or otherwise provided, intended to use them to pay for such an electioneering communication.

(b) Persons who accept funds given, disbursed, donated or otherwise provided by a corporation or labor organization shall not:

(1) Use those funds to pay for any electioneering communication that is not permissible under 11 CFR 114.15; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication that is not permissible under 11 CFR 114.15.

* * * * *

(d)(1) Persons other than corporations and labor organizations who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section, must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of any electioneering communication that is not permissible under 11 CFR 114.15.

(2)(i) Any person who wishes to pay for electioneering communications permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided for the purpose of paying for such electioneering communications as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication permissible under 11 CFR 114.15 shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(ii) Any person, other than corporations and labor organizations, who wishes to pay for electioneering

communications not permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall satisfy paragraph (d)(1) of this section. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

7. Section 114.15 would be added to read as follows:

§ 114.15 Permissible use of corporate and labor organization funds for certain electioneering communications.

(a) *Permissible electioneering communications.* Corporations and labor organizations may make an electioneering communication, as defined in 11 CFR 100.29, to those outside the restricted class without violating the prohibition contained in 11 CFR 114.2(b)(3) if the communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

(b) *Safe Harbors for certain types of electioneering communications.* An electioneering communication shall satisfy paragraph (a) of this section if it meets the requirements of either paragraph (b)(1) or (b)(2) of this section:

(1) *Grassroots lobbying communications.* Any communication that:

(i) Exclusively discusses a pending legislative or executive matter or issue;

(ii) Urges an officeholder to take a particular position or action with respect to the matter or issue, or urges the public to adopt a particular position and to contact the officeholder with respect to the matter or issue;

(iii) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public; and

(iv) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(2) *Commercial and business advertisements.* Any communication that:

(i) Exclusively advertises a Federal candidate's or officeholder's business or professional practice or any other product or service;

(ii) Is made in the ordinary course of business of the entity paying for the communication;

(iii) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public; and

(iv) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(c) *Reporting requirement.* Corporations and labor organizations that make electioneering communications under paragraph (a) aggregating in excess of $10,000 in a calendar year shall file statements as required by 11 CFR 104.20.

End of Alternative 1

Alternative 2

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

8. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434 and 438(a)(8).

9. Section 100.29 would be amended by adding new paragraph (c)(6) to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

* * * * *

(c) * * *

(6) Is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate. A communication shall satisfy this section if it meets the requirements of either paragraph (c)(6)(i) or (ii) of this section:

(i) *Grassroots lobbying communications.* Any communication that:

(A) Exclusively discusses a pending legislative or executive matter or issue;

(B) Urges an officeholder to take a particular position or action with respect to the matter or issue, or urges the public to adopt a particular position and to contact the officeholder with respect to the matter or issue;

(C) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public; and

(D) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(ii) *Commercial and business advertisements.* Any communication that:

(A) Exclusively advertises a Federal candidate's or officeholder's business or professional practice or any other product or service;

(B) Is made in the ordinary course of business of the entity paying for the communication;

(C) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public; and

(D) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office.

End of Alternative 2

Dated: August 24, 2007.

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. E7–17184 Filed 8–30–07; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29064; Directorate Identifier 2007–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), 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:

One Fokker 100 (F28 Mark 0100) operator reported that during maintenance in the APU (auxiliary power unit) compartment, a disconnected nut was discovered on one of the shuttle valves in the deployment lines of the engine fire-extinguishing system. An additional check by the operator revealed that on more aircraft in its fleet, the nuts of the shuttle valves were incorrectly tightened. This condition, if not corrected, could result in failure or deteriorated functioning of the engine fire-extinguishing system in case of an engine fire.

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 October 1, 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:* 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:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: 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 Operations office 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 Operations 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

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–2007–29064; Directorate Identifier 2007–NM–128–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 based on 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—The Netherlands (CAA–NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2006–002, dated January 24, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One Fokker 100 (F28 Mark 0100) operator reported that during maintenance in the APU (auxiliary power unit) compartment, a disconnected nut was discovered on one of the shuttle valves in the deployment lines of the engine fire-extinguishing system. An additional check by the operator revealed that on more aircraft in its fleet, the nuts of the shuttle valves were incorrectly tightened. This condition, if not corrected, could result in failure or deteriorated functioning of the engine fire-extinguishing system in case of an engine fire. Since a potentially unsafe condition has been identified that is likely to exist or develop on other aircraft of this type design, this Airworthiness Directive requires a one-time inspection of the nuts and shuttle valves in the deployment lines of the engine fire-extinguishing system in the APU compartment and corrective actions, as necessary.

The one-time inspection is intended to find discrepancies, including incorrectly installed or tightened nuts, and signs of leakage, damage, or corrosion. Corrective actions include tightening or replacing discrepant nuts or shuttle valves, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–26–019, dated January 6, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might also have 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 13 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,040, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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:

Fokker Services B.V.: Docket No. FAA–2007–29064; Directorate Identifier 2007–NM–128–AD.

Comments Due Date

(a) We must receive comments by October 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire protection.

Reason

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

One Fokker 100 (F28 Mark 0100) operator reported that during maintenance in the APU (auxiliary power unit) compartment, a disconnected nut was discovered on one of the shuttle valves in the deployment lines of the engine fire-extinguishing system. An additional check by the operator revealed that on more aircraft in its fleet, the nuts of the shuttle valves were incorrectly tightened. This condition, if not corrected, could result in failure or deteriorated functioning of the engine fire-extinguishing system in case of an engine fire. Since a potentially unsafe condition has been identified that is likely to exist or develop on other aircraft of this type design, this Airworthiness Directive requires a one-time inspection of the nuts and shuttle valves in the deployment lines of the engine fire-extinguishing system in the APU compartment and corrective actions, as necessary.

The one-time inspection is intended to find discrepancies, including incorrectly installed or tightened nuts, and signs of leakage, damage or corrosion. Corrective actions include tightening or replacing discrepant nuts or shuttle valves, as applicable.

Actions and Compliance

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

(1) Within 6 months after the effective date of this AD, inspect the nuts on the affected shuttle valves in accordance with Section 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–26–019, dated January 6, 2006.

(2) When discrepancies are found during the inspection as required by paragraph (f)(1) of this AD, before next flight, tighten or replace the affected nuts, or replace the shuttle valves; as applicable; in accordance with Section 3 of the Accomplishment Instructions of Fokker SBF100–26–019, dated January 6, 2006.

Note 1: Fokker 70/100 Maintenance Manual Task 26–21–03–400–814A also pertains to this subject.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

No difference.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2006–002, dated January 24, 2006, and Fokker Service Bulletin SBF 100–26–019, dated January 6, 2006, for related information.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17296 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29063; Directorate Identifier 2007–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require a one-time inspection to determine the material of the forward and aft gray water drain masts. For airplanes having composite gray water drain masts, this proposed AD would also require installation of a ground bracket and a copper bonding jumper between a ground bracket and the clamp on the tube of the forward and aft gray water composite drain masts. This proposed AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment. We are proposing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- Fax: (202) 493–2251.
- Hand Delivery: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29063; Directorate Identifier 2007–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that, during an inspection of the forward cargo compartment on a Model 767–300F airplane, an operator found charred insulation blankets and burned wires around the forward gray water composite drain mast. Additional charring on the insulation blankets was noticed several feet away along the routing of the drain mast's ground wire and power wires. Analysis of the damaged parts revealed that a lightning strike on the composite drain mast caused the damage to the wires and insulation blankets. This condition, if not corrected, could cause disruption of electrical power and fire and heat damage to equipment in the event of a lightning strike on the composite drain mast, which could result in the potential loss of several functions essential for safe flight.

A design review of the gray water composite drain mast installation on Model 737, 757, 767, and 777 airplanes revealed that the installation of a heavier bonding jumper is necessary to provide adequate lightning protection to the gray water composite drain mast installation. We are currently considering additional rulemaking to address the identified unsafe condition on Model 737, 757, and 777 airplanes.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–30–0047, dated January 25, 2007 (for Boeing Model 767–200, –300, and –300F series airplanes); and Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007 (for Boeing Model 767–400ER series airplanes). The service bulletins describe procedures for installing a new ground bracket and a 135-ampere copper bonding jumper between the ground bracket and the clamp on the tube of the forward and aft gray water composite drain masts. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 86 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine gray water drain mast material.	1	$80	None	$80	41	$3,280.
Installation of bonding jumper	4	80	Up to $654	Up to $974	Up to 41	Up to $39,934.

Authority for This Rulemaking

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

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

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29063; Directorate Identifier 2007–NM–049–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of charred insulation blankets and burned wires around the forward gray water composite drain mast found during an inspection of the forward cargo compartment. We are issuing this AD to prevent a fire near a composite drain mast and possible disruption of the electrical power system caused by a lightning strike on a composite drain mast, which could result in the loss of several functions essential for safe flight.

Compliance

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

Inspection To Determine Material of Gray Water Drain Mast

(f) Within 60 months after the effective date of this AD, inspect the forward and aft gray water drain masts to determine whether the drain mast is made of aluminum or composite. A review of airplane maintenance records is acceptable in lieu of this inspection if the material of the forward and aft gray water drain masts can be conclusively determined from that review.

(1) For any aluminum gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, no further action is required by this AD for that drain mast only.

(2) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD, do the actions specified in paragraph (g) of this AD.

Installation of New Ground Bracket and Bonding Jumper

(g) For any composite gray water drain mast identified during the inspection or records check required by paragraph (f) of this AD: Within 60 months after the effective date of this AD, install a 135-ampere copper bonding jumper between the new ground bracket and the clamp on the tube of the gray water composite drain mast, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–30–0047, dated January 25, 2007 (for Model 767–200, –300, and –300F series airplanes); and Boeing Special Attention Service Bulletin 767–30–0048, dated January 25, 2007 (for Model 767–400ER series airplanes).

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17294 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29062; Directorate Identifier 2007–NM–020–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. For certain airplanes, this proposed AD would require replacing the outboard stabilizing fitting and certain adjacent components of the main landing gear (MLG) support beam. This proposed AD would also require repetitive inspections for discrepancies of the outboard stabilizing fitting, walking beam hanger, and rear spar attachment, and corrective actions if necessary. For certain airplanes, this proposed AD would provide an alternative one-time inspection of the outboard stabilizing fitting for discrepancies and corrective actions if necessary, which would extend the compliance time for the replacement of the outboard stabilizing fitting. For certain other airplanes, this proposed AD would also require performing a torque check of the aft pin of the outboard stabilizing fitting, and corrective actions if necessary. This proposed AD results from reports of findings of fatigue cracking of the outboard stabilizing fitting and stress corrosion cracking of the bolts attaching the fitting to the wing rear spar. We are proposing this AD to detect and correct that cracking, which could result in disconnection of the MLG actuator from the rear spar and support beam, and consequent damage to the hydraulic system causing hydraulic fluid leakage and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29062; Directorate Identifier 2007–NM–020–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received several reports indicating findings of fatigue cracking of the outboard stabilizing fitting and stress corrosion cracking of the bolts attaching the fitting to the wing rear spar and certain adjacent components of the main landing gear (MLG) support beam on Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Those reports include the following: Cracking of the outboard stabilizing fitting attributed to fatigue, loose or missing forward pins that attach the stabilizing fitting to the stud assembly; a fractured aft pin that attaches the tube assembly to the aft stabilizing fitting, and fractured H–11 bolts that attach the inboard and outboard stabilizing fittings to the wing rear spar. These failures could result in disconnection of the MLG actuator from the rear spar and support beam, and consequent damage to the hydraulic system fluid supply tube causing hydraulic fluid leakage and loss of control of the airplane.

Other Relevant Rulemaking

On December 30, 1998, we issued AD 98–11–04 R1, amendment 39–10984 (64 FR 987, January 7, 1999), for all Boeing Model 737–100 and –200 series airplanes. That AD supersedes AD 91–14–20 to continue to require that the FAA-approved maintenance program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item (SSI). AD 98–11–04 R1 also requires additional and expanded inspections, and repair of cracked structure. That AD was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. We issued that AD to ensure the continued structural integrity of the Boeing Model 737–100 and –200 fleet.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–57A1266, Revision 1, dated January 3, 2007. For certain airplanes, the service bulletin describes procedures for replacing the outboard stabilizing fitting and certain adjacent components of the MLG support beam. The replacement procedures and configuration group to which the airplane belongs, are as follows.

- For airplanes identified in the service bulletin as Groups 1, 2, 3, 4, and 5, the procedures describe replacing the outboard stabilizing fitting with a new titanium fitting and replacing the H–11 bolts that attach the fitting to the wing rear spar with new Inconel 718 bolts. In addition, the procedures describe replacing the aft pin that attaches the tube assembly to the aft outboard stabilizing fitting with a titanium bolt, replacing the forward pin, and replacing the H–11 bolts for the inboard stabilizing fitting with new Inconel 718 bolts. As part of the replacement of the H–11 bolts, the service bulletin recommends contacting Boeing if corrosion damage is found which cannot be removed. The service bulletin also recommends prior or concurrent accomplishment of Part IV of Boeing Service Bulletin 737–57–1052, Revision 4, dated October 24, 1980, for Group 1 and 3 airplanes. Part IV describes procedures for replacing the existing tube assembly of the MLG support beam with a new assembly. For airplanes that had the aft pin of the aft outboard stabilizing fitting replaced per Boeing Alert Service Bulletin 737–57A1266, dated May 8, 2003, the procedures specify performing a torque check of the aft pin of the aft outboard stabilizing fitting and corrective actions if necessary. If the torque is greater than 570 in. lbs., the corrective action is replacing the aft pin and aft outboard stabilizing fitting. If the torque is less than 570 in. lbs., the corrective action is replacing the aft pin.
- For airplanes identified in the service bulletin as Groups 6 and 7, the procedures describe replacing the outboard stabilizing fitting with a titanium fitting and replacing the H–11 bolts that attach the fitting to the wing rear spar with new Inconel 718 bolts. In addition, the procedures describe replacing the forward pin that attaches the stud assembly to the outboard stabilizing fitting with a titanium pin. The procedures also describe replacing the H–11 bolts for the inboard stabilizing fitting with new Inconel 718 bolts for Group 6 only.

• For airplanes identified in the service bulletin as Group 8, the procedures describe replacing the outboard stabilizing fitting with a titanium fitting, and replacing the forward pin that attaches the stud assembly to the outboard stabilizing fitting with new components.

• For airplanes identified in the service bulletin as Group 9, the procedures describe doing a general visual inspection of the outboard stabilizing fitting and fasteners for discrepancies, and corrective actions if necessary. The corrective action is contacting Boeing if any discrepancies are found.

For airplanes identified in the service bulletin as Group 8, and Groups 1 through 7 on which the existing H–11 bolts were previously replaced with Inconel 718 bolts, the procedures describe an alternative magnetic test of the attach bolts to determine if inspections could be done that may extend the compliance time for the replacement of the outboard stabilizing fitting. If any bolt is magnetic, do not do the alternative inspection. If none of the bolts are magnetic, do a one-time general visual inspection of the stabilizing fitting for discrepancies (damage, failure, or irregularity), and a high frequency eddy current (HFEC) inspection for cracking of the fitting inboard and outboard lug faces, the fillet radii, and the fitting lug hole, and verify the fitting hole is within limits, and corrective actions if necessary. Performing the alternative inspection extends the compliance time from 36 to 60 months for replacing the fitting if no cracking is found.

The corrective actions for the alternative inspections are as follows:

• If cracking is found during the alternative inspection, the service bulletin specifies doing the replacement of the fitting as specified in Part II of the service bulletin. If no cracking is found, the service bulletin specifies doing an installation of replacement bushings and reaming the bushing holes to final size, replacing the forward pin, and for Groups 1 through 5, replacing the aft pin. If any other damage is found or if the fitting hole is beyond the hole size limits, the service bulletin recommends contacting Boeing for repair instructions.

For all airplanes, the service bulletin describes procedures for repetitive inspections for discrepancies of the outboard stabilizing fitting, walking beam hanger, and rear spar attachment fitting, and corrective actions if necessary. The corrective action is contacting Boeing if any discrepancies are found.

Service Bulletin 737–57A1266 refers to the following service bulletins as acceptable sources of service information:

Boeing Service Bulletin 737–57–1231, dated December 1, 1994, is an acceptable source of service information for accomplishment of the replacement of the H–11 attachment bolts of the inboard stabilizing fitting with new components for some airplane groups.

Boeing Service Bulletin 737–57–1073, Revision 4, dated April 12, 1985, is an acceptable source of service information for previous accomplishment of the replacement of the MLG support beam.

We have determined that accomplishment of the actions specified in Service Bulletin 737–57A1266 will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the Boeing Alert Service Bulletin 737–57A1266, Revision 1, except as discussed under ''Differences Between the Proposed AD and Alert Service Bulletin 737–57A1266.''

Differences Between the Proposed AD and Alert Service Bulletin 737–57A1266

For airplanes identified in the service bulletin as Groups 1 through 5 on which the aft pin of the outboard stabilizing fitting has been replaced in accordance with the original issue of the service bulletin: The service bulletin recommends accomplishing the torque check of the aft pin within 36 months after the original issue date of the service bulletin, and, if the aft pin does not pass the torque check, replacing the aft pin and aft outboard stabilizing fitting within an additional 36 months after the torque check. However, we have determined that interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. We find that a compliance time of within 36 months after accomplishing the replacement, or 36 months after the effective date of this AD, whichever is later, for doing the torque check and doing all applicable corrective actions before further flight, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the manufacturer.

Certain sections in Parts I, II, and V of the Accomplishment Instructions of the service bulletin specify ''For 737–100 and –200 airplanes'' and ''For 737–300 and –500 airplanes.'' Those sections are applicable to Model 737–100, –200, and –200C airplanes, and Model 737–300, –400, and –500 airplanes, respectively. Model 737–200C and –400 airplanes were inadvertently excluded from those sections.

The service bulletin also specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 3,130 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1,380 airplanes of U.S. registry.

For all airplanes: The proposed replacement would take between 20 and 24 work hours per airplane to do, depending on the airplane's configuration, at an average labor rate of $80 per work hour. Required parts would cost between $3,658 and $4,272 per airplane, depending on the airplane's configuration. Based on these figures, the estimated cost of the proposed replacement is estimated to be up to between $7,256,040 and $8,544,960, or between $5,258 and $6,192 per airplane, depending on the airplane's configuration.

For Groups 1 through 8 airplanes: The alternative inspection, if done, would take about 12 work hours per airplane to do, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the alternative inspection is estimated to be up to $1,324,800, or $960 per airplane.

For Group 9 airplanes: The general visual inspection would take about 2 work hours per airplane to do, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the general visual inspection is estimated to be up to $220,800, or $160 per airplane.

For Groups 1 through 5 airplanes that had steel pins replaced per the original issue of the service bulletin: The torque check would take about 7 work hours

per airplane to do, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the torque check is estimated to be up to $772,800, or $560 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29062; Directorate Identifier 2007–NM–020–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of findings of fatigue cracking of the outboard stabilizing fitting and stress corrosion cracking of the bolts attaching the fitting to the wing rear spar. We are issuing this AD to detect and correct that cracking, which could result in disconnection of the main landing gear (MLG) actuator from the rear spar and support beam, and consequent damage to the hydraulic system causing hydraulic fluid leakage and loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''alert service bulletin'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1266, Revision 1, dated January 3, 2007.

Replacement/Repetitive Inspections

(g) For airplanes identified as Groups 1 through 8, as specified in the alert service bulletin, except as provided by paragraphs (h) and (k) of this AD: Within 36 months after the effective date of this AD, replace the outboard stabilizing fitting, H–11 bolts, forward pin, and aft pin, as applicable, with new components by doing all the applicable actions in accordance with Part II of the alert service bulletin, except as provided by paragraph (j) of this AD. Within 120 months after accomplishing the replacement, do a general visual inspection for discrepancies of the outboard stabilizing fitting, walking beam hanger, and rear spar attachment fitting, and do all applicable corrective actions, by doing all the actions, except as provided by paragraph (j) of this AD, in accordance with Part V of the alert service bulletin. Do all corrective actions before further flight. Repeat the inspection at intervals not to exceed 120 months.

Alternative Inspection

(h) For airplanes identified as Groups 1 through 8, as specified in the alert service bulletin, on which the existing H–11 bolts were replaced before the effective date of this AD with Inconel 718 bolts, in lieu of doing the actions required by paragraph (g) of this AD: Within 4,500 flight cycles or 36 months after the effective date of this AD, whichever is later, do a magnetic test of the attach bolts in accordance with the alert service bulletin. If any bolt is magnetic, discontinue the alternative inspection specified in the alert service bulletin and accomplish the actions required by paragraph (g) before further flight. If none of the bolts are magnetic, do all the applicable actions in accordance with Part I of the alert service bulletin before further flight.

(1) If any crack is found: Stop the inspection and before further flight do the actions required by paragraph (g) of this AD. Repetitive inspections must be done after replacing the fitting at the interval specified in paragraph (g) of this AD.

(2) If no crack is found: Before further flight, replace the forward pin and aft pin, as applicable, in accordance with the alert service bulletin, and within 60 months after the effective date of this AD, do the remaining replacement required by paragraph (g) of this AD. Repetitive inspections must be done after replacing the fitting at the interval specified in paragraph (g) of this AD.

(3) If damage other than cracking is found, or if the fitting lug hole is beyond hole size limits, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

General Visual Inspection

(i) For airplanes identified as Group 9, as specified in the alert service bulletin: Within 36 months or 4,500 flight cycles after the effective date of this AD, whichever occurs later, do a general visual inspection of the outboard stabilizing fitting and fasteners for discrepancies, and do all applicable corrective actions in accordance with Part IV of the alert service bulletin, except as provided by paragraphs (j) and (k) of this AD. Within 120 months after the inspection specified in Part IV has been done, do a general visual inspection for discrepancies of the outboard stabilizing fitting, walking beam hanger and rear spar attachment fitting in accordance with Part V of the alert service bulletin, and do all applicable corrective actions in accordance with Part V of the alert service bulletin, except as provided by paragraphs (j) and (k). Do all applicable corrective actions before further flight. Repeat the Part V inspection at intervals not to exceed 120 months.

Exceptions to Alert Service Bulletin Specifications

(j) During any inspection required by this AD, if any corrosion damage is found that cannot be removed, or if any damage is found

that is outside the limits specified in the alert service bulletin, or if any discrepancy is found and the alert service bulletin specifies contacting the manufacturer for disposition of certain repair conditions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(k) Certain sections in Parts I, II, and V of the Accomplishment Instructions of the alert service bulletin specify ''For 737–100 and –200 airplanes'' and ''For 737–300 and –500 airplanes.'' However, those sections are applicable to Model 737–100, –200, and –200C airplanes, and Model 737–300, –400, and –500 airplanes, respectively.

Torque Check

(l) For airplanes identified as Groups 1 through 5, as specified in the alert service bulletin, on which the aft pin of the aft outboard stabilizing fitting was replaced before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737–57A1266, dated May 8, 2003: Within 36 months after the effective date of this AD, do a torque check to determine whether the aft pin is correctly installed. Do all applicable corrective actions before further flight. Do the actions in accordance with Part III of the alert service bulletin.

Concurrent Requirements

(m) For airplanes identified as Groups 1 and 3, as specified in the alert service bulletin: Prior to or concurrently with accomplishment of paragraph (g) of this AD, do the replacement of the existing tube assembly of the outboard stabilizing fitting as specified in Part IV of Boeing Service Bulletin 737–57–1052, Revision 4, dated October 24, 1980.

Credit for Previously Accomplished Actions

(n) Replacement of the tube assembly before the effective date of this AD in accordance with Boeing Service Bulletin 737–57–1073, Revision 4, dated April 12, 1985, is acceptable for compliance with the replacement specified in paragraph (l) of this AD.

(o) For Groups 1 through 4, as specified in the alert service bulletin: Replacement of the H–11 bolts for the inboard stabilizing fitting before the effective date of this AD, in accordance with Boeing Service Bulletin 737–57–1231 dated December 1, 1994, is acceptable for compliance with the replacement specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17290 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29065; Directorate Identifier 2007–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This proposed AD would require inspecting the trunnion fork assembly of the wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies. For certain airplanes, this proposed AD also would require, if necessary, various inspections to detect discrepancies of the trunnion fork assemblies, related investigative/corrective actions, and a terminating action. This proposed AD results from a report of a fractured trunnion fork assembly. We are proposing this AD to prevent a fractured trunnion fork assembly, which could result in the collapse of a wing landing gear on the ground and possible damage to hydraulic equipment and the aileron and spoiler cables. Such damage could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29065; Directorate Identifier 2007–NM–142–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that a fractured trunnion fork assembly was found during push back and tow of an airplane. Analysis showed that a crack was initiated by fatigue on the inner surface and eventually fractured by ductile rupture. The analysis also showed that the crack most likely initiated as a result of two manufacturing anomalies. A fractured trunnion fork assembly could result in the collapse of a wing landing gear on the ground and possible damage to hydraulic equipment and the aileron and spoiler cables. Such damage could result in reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–32A2482, dated June 14, 2007. The service information describes procedures for inspecting the pad-up area on the forward upper inboard surface of the trunnion fork assembly of both the left and right wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies. For certain airplanes, the service information describes the following procedures, as applicable:

- Doing an initial detailed inspection for damage to the protective finish and for corrosion of the trunnion fork assembly, and an initial high frequency eddy current (HFEC) inspection to detect cracks of the trunnion fork assembly (Part 2).
- Doing an ultrasonic inspection to determine the wall thickness in the area forward of the outer cylinder attach lugs in 8 zones, and a hardness measurement if the wall thickness is less than the specified value (Part 3).
- Doing related investigative/corrective actions if necessary. The related investigative actions include repetitive detailed and HFEC inspections (Part 2). The corrective actions include overhauling the trunnion fork assembly (Part 4), and replacing the trunnion fork assembly (Part 5); as applicable.
- Replacing the trunnion fork assembly of the wing landing gear with a certain trunnion fork assembly (Part 5). Accomplishing the replacement ends the need for the actions specified in the service information.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The compliance time for the initial detailed, HFEC, and ultrasonic inspections and replacement specified in the service information is either 18 months or 6 years, depending on the category of the trunnion fork assembly. The compliance time for the related investigative/corrective actions specified in the service information ranges between before further flight and 10 years, depending on the condition of the trunnion fork assembly.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 1,055 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 215 airplanes of U.S. registry. The proposed inspection for part number, serial number, and category would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this inspection proposed by this AD for U.S. operators is $17,200, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29065; Directorate Identifier 2007–NM–142–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B,

747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–32A2482, dated June 14, 2007.

Unsafe Condition

(d) This AD results from a report of a fractured trunnion fork assembly. We are issuing this AD to prevent a fractured trunnion fork assembly, which could result in the collapse of a wing landing gear on the ground and possible damage to hydraulic equipment and the aileron and spoiler cables. Such damage could result in reduced controllability of the airplane.

Compliance

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 747–32A2482, dated June 14, 2007.

Initial Inspection for Part Number, Serial Number, and Category

(g) Within 18 months after the effective date of this AD, inspect the pad-up area on the forward upper inboard surface of the trunnion fork assembly of both the left and right wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies, in accordance with the Accomplishment Instructions of the service bulletin.

Follow-On Actions for Category A, B, C, or D Trunnion Fork Assemblies

(h) If any part number and serial number identified as Category A, B, C, or D in Tables 2 and 3 of paragraph 1.E., ''Compliance,'' of the service bulletin is found installed during the inspection required by paragraph (g) of this AD: At the applicable compliance time(s) listed in Table 4 or 5 of paragraph 1.E., ''Compliance,'' of the service bulletin, except as provided by paragraph (i) of this AD, do the applicable action(s) in Table 1 of this AD and applicable related investigative/corrective actions, in accordance with the Accomplishment Instructions of the service bulletin.

TABLE 1.—REQUIREMENTS FOR CATEGORY A, B, C, OR D TRUNNION FORK ASSEMBLIES

For—	Do—	And—	Or—
(1) Categories A and D trunnion fork assemblies.	A detailed inspection for damage to the protective finish and for corrosion of the trunnion fork assembly and a high frequency eddy current (HFEC) inspection to detect cracks (Part 2).	An ultrasonic inspection to determine the wall thickness in the area forward of the outer cylinder attach lugs in 8 zones, and a hardness measurement if applicable (Part 3).	Do the terminating action (Part 5).
(2) Categories B and C trunnion fork assemblies.	An ultrasonic inspection to determine the wall thickness in the area forward of the outer cylinder attach lugs in 8 zones, and a hardness measurement (Part 3).	None	None.

(i) Where paragraph 1.E., ''Compliance,'' of the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Terminating Action

(j) Replacing the trunnion fork assembly of the wing landing gear with a trunnion fork assembly identified in Part 5 of the service bulletin, in accordance with and at the applicable time specified in Table 4 or 5 of paragraph 1.E., ''Compliance,'' of the service bulletin, constitutes terminating action for the requirements of this AD for that side only.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17284 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29061; Directorate Identifier 2006–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–50, –60, –60F, –70, and –70F Series Airplanes; Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas airplanes. The existing AD currently requires an initial

general visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. The existing AD also requires, for certain airplanes, replacing the rudder pedal bracket assemblies with new, improved parts, which would terminate the repetitive inspections. This proposed AD would, for certain airplanes, reduce initial inspection thresholds, remove an inspection option, and lengthen the repetitive inspection intervals. This proposed AD results from reports of failures of the captain's rudder pedal brackets before reaching the initial inspection threshold identified in the existing AD. We are proposing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Fax:* (202) 493–2251.

• *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–29061; Directorate Identifier 2006–NM–243–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or may can visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On March 31, 2006, we issued AD 2006–07–25, amendment 39–14552 (71 FR 18201, April 11, 2006), for certain McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–50, –60, –60F, and –70 series airplanes; Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. That AD requires an initial general visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. The existing AD also requires, for certain airplanes, replacing the rudder pedal bracket assemblies with new, improved parts, which would terminate the repetitive inspections. That AD resulted from a report of numerous cracked rudder pedal brackets found during inspections of certain affected airplanes. We issued that AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

Actions Since Existing AD Was Issued

Since we issued AD 2006–07–25, two Model MD–80 operators have reported failures of the captain's rudder pedal brackets before reaching the initial inspection threshold of 40,000 total landings specified in AD 2006–07–25. One operator reported finding a crack in the first officer's rudder pedal bracket at 34,000 landings. Lab analysis of these parts verified that fatigue was the cause of the failure. Boeing re-evaluated the current inspection interval and determined that lowering the initial threshold to 25,000 total landings is necessary for operators of Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.

Boeing also determined that the general visual inspection for cracks is no longer necessary because the eddy current and dye penetrant inspections are adequate for Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. In addition, Boeing has lengthened the repetitive inspection interval for the eddy current and any applicable dye penetrant inspection (also called ''special detailed inspections'') for these airplanes from intervals not to exceed 2,500 landings to intervals not to exceed 3,000 landings.

Clarification of Applicability

We have also clarified the applicability to include Model DC–8–71F, DC–8–72F, and DC8–73F airplanes. These models were inadvertently omitted from Table 1, paragraph (c), ''Applicability,'' of AD 2006–07–25. However, these models were included in the effectivity of McDonnell Douglas DC–8 Alert Service Bulletin A27–273, dated May 16, 1989, which we referred to in AD 2006–07–25 as a source for identifying airplanes affected by that AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006. We referred to an earlier revision of this same service bulletin (McDonnell Douglas DC–9 Alert

Service Bulletin A27–307, Revision 6, dated December 19, 1994) as the appropriate source of service information for doing certain actions in AD 2006–07–25.

The actions in Boeing Alert Service Bulletin DC9–27A307, Revision 7, are essentially the same as those in McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 6. However, Boeing Alert Service Bulletin DC9–27A307, Revision 7, revises certain inspection thresholds and intervals. Revision 7 also removes a general visual inspection for certain airplanes and, instead, specifies a special detailed inspection. The special detailed inspection consists of either doing an eddy current inspection for cracking of the rudder pedal bracket assemblies and, if any crack is found, doing a penetrant inspection for cracking; or doing the penetrant inspection for cracking of the rudder pedal bracket assemblies. Revision 7 includes a definition of a special detailed inspection.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–07–25 and would retain the requirements of the existing AD. This proposed AD would also, for certain airplanes, reduce certain initial inspection thresholds, remove an inspection option, and lengthen certain repetitive inspection intervals.

Explanation of Changes to Existing AD

We have changed the parts cost for the replacement to reflect the cost information in the current Boeing service information.

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

We have revised references to certain service information to more accurately reflect the reference as cited on the service information itself.

We have added a new paragraph (f) titled ''Service Information and Airplane Categories'' to reduce the length of the references to both in the AD itself. We have re-identified the paragraphs accordingly, and revised this action to refer to the airplane categories rather than list the models individually. We have also removed Note 2 of the existing AD because the new paragraph (f) makes the contents of the note unnecessary.

Costs of Compliance

There are about 1,840 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The replacements are applicable only to Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
General visual inspection (required by AD 2006–07–25).	3	$80	None	$240, per inspection cycle.	250	$60,000, per inspection cycle.
Dye penetrant (special detailed) inspection (required by AD 2006–07–25).	5	80	None	$400, per inspection cycle.	946	$378,400, per inspection cycle.
Replacements (required by AD 2006–07–25).	9	80	$9,466	$10,186	up to 946	up to $9,635,956.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14552 (71 FR 18201, April 11, 2006) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–29061; Directorate Identifier 2006–NM–243–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) This AD supersedes AD 2006–07–25.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

McDonnell Douglas—	As identified in—
Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; Model DC–8–71F, DC–8–72F, and DC–8–73F airplanes.	McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 5, dated February 18, 1993.
Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.	Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006.

Unsafe Condition

(d) This AD results from reports of failures of the captain's rudder pedal brackets before reaching the initial inspection threshold identified in AD 2006–07–25. We are issuing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

Compliance

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

Service Information and Airplane Categories

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD. The term ''airplane category,'' as used in this AD, means the category identified in Table 2 of this AD.

TABLE 2.—SERVICE INFORMATION AND AIRPLANE CATEGORIES

For Model—	Called airplane category—	Use this service bulletin—
(1) DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes.	1	McDonnell Douglas DC–8 Alert Service Bulletin A27–273, Revision 1, dated May 16, 1989; or Revision 5, dated February 18, 1993.
(2) DC–8–71F, DC–8–72F, and DC–8–73F airplanes	2	
(3) DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes.	3	McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 1, dated May 16, 1989; or Boeing Alert Service Bulletin DC9–27A307, Revision 7, dated August 29, 2006 (after the effective date of this AD, only Revision 7 may be used).
(4) DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.	4	

Requirements of AD 2006–07–25

Initial Inspection Threshold

(g) For airplane categories 1, 3, and 4, prior to the accumulation of 40,000 total landings or within 30 days after July 5, 1989 (the effective date of AD 89–14–02, amendment 39–6245, which was superseded by AD 2006–07–25), whichever occurs later: Perform either a general visual inspection, dye penetrant inspection, or special detailed inspection (eddy current with dye penetrant or just dye penetrant), as applicable, for cracking of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 2 of this AD. After the effective date of this AD, only the special detailed inspection specified in Boeing Alert Service Bulletin DC9–27A307, Revision 7, may be used for airplanes identified in Revision 7. For airplane category 4: Do the inspection required by this paragraph until the inspection required by paragraph (j) of this AD is accomplished.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If an initial general visual inspection is accomplished, and no crack is found, perform a dye penetrant inspection of the rudder pedal bracket assembly within 180 days after the general visual inspection, and

thereafter accomplish dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier. For airplane categories 3 and 4, repeat at this interval until the inspection required by paragraph (k) of this AD is accomplished.

(2) If an initial dye penetrant inspection is accomplished, and no crack is found, accomplish repetitive dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier. For airplane categories 3 and 4, repeat at this interval until the inspection required by paragraph (k) of this AD is accomplished.

(3) If an initial special detailed inspection is accomplished after the effective date of this AD, and no crack is found, repeat the inspection in accordance with paragraph (k) of this AD.

Corrective Action

(h) Except as provided by paragraph (l) of this AD: If any crack is detected during any inspection required by paragraph (g) or (j) of this AD, before further flight, remove and replace the rudder pedal bracket assembly in accordance with the service bulletin. Prior to the accumulation of 40,000 total landings after replacement with the new part, resume the repetitive inspections in accordance with paragraph (g) or (k) of this AD, as applicable. Doing the action required by paragraph (l) of this AD terminates the requirements of this paragraph for airplane category 4.

Terminating Action for Certain Airplanes

(i) For airplane categories 3 and 4: Do the actions in paragraphs (i)(1) and (i)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Before the accumulation of 75,000 total landings on the captain's rudder pedal bracket assembly, P/N 5616067–501, or within 60 months after May 16, 2006, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962903–501. Accomplishment of the replacement terminates the repetitive inspections of the captain's rudder pedal bracket assembly required by paragraphs (g), (h), (j), (k), and (l) of this AD.

(2) Before the accumulation of 75,000 total landings on the first officer's rudder pedal bracket assembly, P/N 5616068–501, or within 60 months after May 16, 2006, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962904–501. Accomplishment of the replacement terminates the repetitive inspections of the first officer's rudder pedal bracket assembly required by paragraphs (g), (h), (j), (k), and (l) of this AD.

New Requirements of This AD

Revised Initial Inspection at Reduced Threshold for Certain Airplanes

(j) For airplane categories 2 and 4, at the applicable time specified in paragraph (j)(1), (j)(2) or (j)(3) of this AD: Do a special detailed inspection for cracking of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with the service bulletin. Doing this inspection terminates the inspection requirements of paragraphs (g) and (h) of this AD for airplane category 4.

(1) For category 2 airplanes: Before the accumulation of 40,000 total landings or within 30 days after the effective date of this AD, whichever occurs later.

(2) For category 4 airplanes that have accumulated fewer than 25,000 total landings as of the effective date of this AD: Before the accumulation of 25,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later.

(3) For category 4 airplanes that have accumulated 25,000 or more total landings as of the effective date of this AD, do the next inspection at the applicable time in paragraph (j)(3)(i) or (j)(3)(ii) of this AD.

(i) For category 4 airplanes on which the corrective action specified in paragraph (h) of this AD has not been accomplished, do the inspection within 3,000 landings after the effective date of this AD.

(ii) For category 4 airplanes on which the corrective action required by paragraph (h) of this AD has been accomplished, do the inspection at the earlier of the following: The next repetitive interval required by paragraph (h) of this AD; 40,000 total landings after doing the corrective action required by paragraph (h) of this AD; or 3,000 landings after the effective date of this AD.

Repetitive Inspections at Revised Interval for Certain Airplanes

(k) For airplane categories 3 and 4: Repeat the special detailed inspection required by paragraph (g) or (j) of this AD thereafter at intervals not to exceed 3,000 landings. Doing the first repetitive inspection required by this paragraph terminates the repetitive inspection requirements of paragraph (g) of this AD for airplane categories 3 and 4.

Corrective Action Including Reduced Inspection Threshold for Certain Airplanes

(l) For airplane category 4: If any crack is detected during any inspection required by paragraph (g), (j), or (k) of this AD: Before further flight, remove and replace the rudder pedal bracket assembly in accordance with the service bulletin. Before the accumulation of 25,000 total landings after replacement with the new part, resume the repetitive inspections in accordance with paragraph (k) of this AD. Doing the action in this paragraph terminates the requirements of paragraph (h) of this AD for airplane category 4.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) AMOCs, approved previously in accordance with AD 2006–07–25, amendment 39–14552; and AD 89–14–02, amendment 39–6245; are approved as AMOCs for the corresponding requirements of this AD.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17287 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29066; Directorate Identifier 2007–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration (FAA), 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:

It has been discovered in several cases that clamp bolts of the elevator spring tab mechanism were not installed in the correct orientation. Bolts have been found installed with bolt heads on the lower position and in two cases, some bolts, nuts and washers [hardware] were found to be loose or missing. Detachment of an elevator spring tab mechanism clamp bolt could lead to jamming of the elevator control system and reduced controllability of the aircraft.

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 October 1, 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:* 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:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal: 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 Operations office 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 Operations 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: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

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–2007–29066; Directorate Identifier 2007–NM–147–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 based on 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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2007–08, dated June 4, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been discovered in several cases that clamp bolts of the elevator spring tab mechanism were not installed in the correct orientation. Bolts have been found installed with bolt heads on the lower position and in two cases, some bolts, nuts and washers [hardware] were found to be loose or missing. Detachment of an elevator spring tab mechanism clamp bolt could lead to jamming of the elevator control system and reduced controllability of the aircraft.

The MCAI requires a one-time inspection of the left- and right-hand elevator spring tab mechanism hardware for correct installation, and prior to further flight, installing new hardware for any hardware that is incorrectly installed. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 8–27–106, dated February 7, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might also have 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 150 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. Required parts would cost about $0 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. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $36,000, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2007–29066; Directorate Identifier 2007–NM–147–AD.

Comments Due Date

(a) We must receive comments by October 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 611 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

It has been discovered in several cases that clamp bolts of the elevator spring tab mechanism were not installed in the correct orientation. Bolts have been found installed with bolt heads on the lower position and in two cases, some bolts, nuts and washers [hardware] were found to be loose or missing. Detachment of an elevator spring tab mechanism clamp bolt could lead to jamming of the elevator control system and reduced controllability of the aircraft.

The MCAI requires a one-time inspection of the left- and right-hand elevator spring tab mechanism hardware for correct installation, and prior to further flight, installing new hardware for any hardware that is incorrectly installed.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD: Carry out a one-time inspection of the left- and right-hand elevator spring tab mechanism hardware for correct installation according to the Accomplishment Instructions of Bombardier Service Bulletin 8–27–106, dated February 7, 2006.

(2) If any hardware is found incorrectly installed during the inspection required by paragraph (f)(1) of this AD, prior to further flight, install new hardware according to the Accomplishment Instructions of Bombardier Service Bulletin 8–27–106, dated February 7, 2006.

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, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–08, dated June 4, 2007, and Bombardier Service Bulletin 8–27–106, dated February 7, 2006, for related information.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17282 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29067; Directorate Identifier 2007–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –300 series airplanes. This proposed AD would require doing a detailed inspection for damage of the wire bundle of the right recirculation fan, and repair if necessary. This proposed AD would also require re-routing the wire bundle of the right recirculation fan. This proposed AD results from a report indicating that, during landing of a Model 757 airplane, an overheat warning and smoke occurred in the main cabin, and the right recirculation fan stopped operating. We are proposing this AD to prevent damage of the wiring bundle of the right recirculation fan. Such damage could result in a short circuit and possible fire in the mix bay or smoke in the main cabin.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle,

Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29067; Directorate Identifier 2007–NM–148–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that, during landing of a Model 757 airplane, an overheat warning and smoke occurred in the main cabin, and the right recirculation fan stopped operating. Investigation revealed fire damage to the right recirculation fan, the fan wiring bundle and electrical connector, and the insulation blankets in the mix bay. A fire, which extinguished without aid, had ignited in the top layer of the insulation blanket. The fire might have resulted from lint or dust touching a short circuit in the fan wiring bundle caused by chafing of the wire bundle against adjacent structure. This condition, if not corrected, could result in fire in the mix bay or smoke in the main cabin.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757–21–0109, dated December 15, 2006. The service bulletin describes procedures for doing a detailed inspection for damage of the wire bundle of the right recirculating fan and repair if necessary. The service bulletin also describes procedures, including re-orienting the electrical connector, for re-routing the wire bundle of the right recirculating fan. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 920 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 560 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $81 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $134,960, or $241 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29067; Directorate Identifier 2007–NM–148–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –300 series airplanes; certificated in any category; as identified in Boeing Service Bulletin 757–21–0109, dated December 15, 2006.

Unsafe Condition

(d) This AD results from a report indicating that, during landing of a Model 757 airplane, an overheat warning and smoke occurred in the main cabin, and the right recirculation fan stopped operating. We are issuing this AD to prevent damage of the wiring bundle of the right recirculation fan. Such damage could result in a short circuit and possible fire in the mix bay or smoke in the main cabin.

Compliance

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

Inspection and Corrective Actions

(f) Within 24 months after the effective date of this AD, do all actions required by paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–21–0109, dated December 15, 2006.

(1) Do a detailed inspection for damage of the wire bundle of the right recirculation fan, and repair any damage before further flight.

(2) Re-route the wire bundle and re-orient the electrical connector of the right recirculation fan.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17280 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29087; Directorate Identifier 2007–NM–094–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require repetitive lubrication of the left and right main landing gear (MLG) forward trunnion pins. This proposed AD would also require an inspection for discrepancies of the transition radius of the MLG forward trunnion pins, and repair or replacement if necessary. This proposed AD would also require a one-time inspection for discrepancies of the lead-in chamfer and cross-bolt bore, and repair or replacement if necessary. Doing the applicable inspections and repairs/replacements, or overhauling the trunnion pins ends the repetitive lubrication requirements of this proposed AD. This proposed AD results from a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. We are proposing this AD to prevent cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29087; Directorate Identifier 2007–NM–094–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that the protective finishes on the forward trunnion pins for the main landing gear (MLG) might have been damaged during final assembly of Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The protective coating could be damaged at two locations because of the use of an unauthorized process, and damaged at one location because the pin was not handled correctly. Therefore, it is possible that these trunnion pins have been delivered to operators with compromised corrosion protection in these critical areas:

- The cross-bolt bore and outer diameter surface.
- The lead-in chamfer and outer diameter surface.
- The transition radius between the chrome-plated outer diameter and the spherical ball bearing surface.

Damage to the protective finish puts the base metal of the trunnion pin at risk from corrosion pitting. This condition, if not corrected, could lead to cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007. The service bulletin describes procedures for repetitive lubrication of the MLG forward trunnion pins. The service bulletin states that accomplishing the inspections and applicable repairs/replacements described below, or overhauling the trunnion pins in accordance with Boeing 737 Component Maintenance Manual 57–15–01, eliminates the need for the repetitive lubrication.

The service bulletin also describes procedures for an inspection for discrepancies (corrosion, finish damage, surface deformation, or scratches) of the transition radius. If any discrepancy is found, the service bulletin specifies repairing or replacing the trunnion pin, as applicable, depending on the type of discrepancy found. The repair includes blending and restoring the protective finish. If the trunnion pin is not replaced, the service bulletin specifies an additional inspection for discrepancies of the lead-in chamfer and the cross-bolt bore. If any discrepancy is found, the service bulletin specifies repairing or replacing the trunnion pin, as applicable, depending on the type of discrepancy found.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

Although Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007, specifies to send inspection reports to the manufacturer, this proposed AD would not require that action.

Costs of Compliance

There are about 890 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive lubrication	1	$0	$80, per lubrication cycle	300	$24,000, per lubrication cycle.
Inspections	4	0	320	300	$96,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29087; Directorate Identifier 2007–NM–094–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, -700, -700C, -800 and -900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007.

Unsafe Condition

(d) This AD results from a report that the protective finishes on the forward trunnion pins for the left and right main landing gear (MLG) might have been damaged during final assembly. We are issuing this AD to prevent cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

Compliance

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

Lubrication or Overhaul

(f) Within 30 days after the effective date of this AD: Lubricate the left and right MLG forward trunnion pins in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007. Repeat the lubrication at intervals not to exceed 30 days until all applicable requirements of paragraphs (g) and (h) of this AD have been accomplished. Overhauling the trunnion pin as given in the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 1, ends the repetitive lubrication requirements of this paragraph for that pin.

Inspection and Corrective Actions

(g) Within 60 months after the date of issuance of the original standard airworthiness certificate or date of issuance of the original standard export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for discrepancies (corrosion, finish damage, surface deformation, or scratches) of the transition radius of the left and right MLG trunnion pin; and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007.

(h) For any airplane on which a trunnion pin is not replaced in accordance with paragraph (g) of this AD, within 96 months after the date of issuance of the original standard airworthiness certificate or date of issuance of the original standard export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for discrepancies of the lead-in chamfer and cross-bolt bore; and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007.

No Report Required

(i) Although Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007, specifies to send inspection reports to the manufacturer, this AD does not include that requirement.

Credit for Actions Done Using Previous Issue of Service Information

(j) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 737–32–1376, dated May 12, 2005, are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17285 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29069; Directorate Identifier 2007–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, and –200C series airplanes. This proposed AD would require revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item (SSI), doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure. This proposed AD results from a report of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design service goal. We are proposing this AD to ensure the continued structural integrity of the entire fleet of Model 737–100, –200, and –200C series airplanes.

DATES: We must receive comments on this proposed AD by October 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service

information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29069; Directorate Identifier 2007–NM–176–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

In the early 1980's, as part of its continuing work to maintain the structural integrity of older transport category airplanes, we concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service objective (DSO). In light of this, and as a result of increased utilization, and longer operational lives, we determined that a supplemental structural inspection program (SSIP) was necessary to maintain the continued structural integrity for all airplanes in the transport fleet.

Issuance of Advisory Circular (AC)

As a follow-on from that determination, we issued AC No. 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b (''Airplane Airworthiness, Transport Categories'') of the Civil Air Regulations or damage tolerance structural requirements of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D (''Special Flight Operations'') of part 91 of the FAR (14 CFR part 91); part 121 (''Operating Requirements: Domestic, Flag, and Supplemental Operations''); part 125 (''Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More''); and part 135 (''Operating Requirements: Commuter and On-Demand Operations'') of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Development of the SSIP

In order to evaluate the effect of increased fatigue cracking with respect to maintaining fail-safe design and damage tolerance of the structure of Boeing Model 737–100, –200, and –200C series airplanes, Boeing conducted a structural reassessment of those airplanes, using damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in AC No. 91–56, as well as Amendment 25–45 of section 25.571 (''Damage-tolerance and fatigue evaluation of structure'') of the FAR (14 CFR 25.571). During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model 737–100, –200, and –200C series airplanes. Engineers and maintenance specialists from the FAA also supported these sessions. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Structural Inspection Document (SSID).

Other Related Rulemaking

We previously issued AD 98–11–04 R1, amendment 39–10984 (64 FR 987, January 7, 1999), applicable to all Boeing Model 737–100, –200, and –200C series airplanes (which refers to Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995, as the appropriate source of service information for doing the required actions). That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating (DTR) for each structural significant item (SSI), and repair of cracked structure. The affected SSIs include, but are not limited to, the wing, fuselage, empennage, and strut. For Model 737–200C series airplanes, that AD requires inspecting SSIs affected by cargo configuration changes only.

Relevant Service Information

We have reviewed Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007 (hereafter ''Revision E''); and ''Appendix A Model 737–100/200/200C Airplanes,'' Original Release, dated May 2007, of Revision E (hereafter ''Appendix A''). Revision E and Appendix A describe procedures for revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required DTR for each SSI, doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure. The inspections specified in Revision E are essentially identical to those in Revision D, except for Appendix A. Appendix A adds inspection procedures for SSIs on the wing trailing edge flap structure, which were not included previously in any revision of the SSID. Accomplishing the actions specified in Revision E and Appendix A is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe

condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require the following actions:

Paragraph (h) of the proposed AD would require incorporation of a revision into the FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Appendix A.

Paragraph (i) of the proposed AD would require repetitive inspections to detect cracks of all SSIs.

Paragraph (j) of the proposed AD would require repairing any cracked structure in accordance with a method approved by the FAA or an Authorized Representative (AR) for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Paragraph (k) of the proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for doing the inspections required by this proposed AD must be established.

Differences Between the Proposed AD and Service Information

For Model 737–100 and –200 series airplanes, and Model 737–200C series airplanes on which details are not affected by the cargo configuration, Section 3.0, ''Structural Significant Items (SSIs),'' of Revision E specifies a threshold of 66,000 flight cycles for accomplishing the initial inspections; however, it does not specify a grace period for airplanes that are near or exceeded that threshold. This proposed AD would allow a grace period of 12 months after the effective date of the AD to incorporate Appendix A into the FAA-approved maintenance inspection program. This proposed AD also would allow a grace period of 4,000 flight cycles measured from 12 months after the effective date of the AD to initiate the applicable inspections to detect cracks of all SSIs.

Revision E does not specify instructions on how to repair certain conditions. This proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that have been approved by an AR for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 676 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance inspection program.	200 per operator (23 U.S. operators).	$80	$16,000 per operator	118	$368,000.
Inspections	150 per airplane	80	$12,000, per airplane, per inspection cycle.	118	$1,416,000 per inspection cycle.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Further, compliance with this proposed AD would be a means of compliance with the aging airplane safety final rule (AASFR) for the baseline structure of Model 737–100, –200, and –200C series airplanes. The AASFR final rule requires certain operators to incorporate damage tolerance inspections into their maintenance inspection programs. These requirements are described in 14 CFR 121.370(a) and 129.16. Accomplishment of the actions required by this proposed AD will meet the requirements of these CFR sections for the baseline structure. The costs for accomplishing the inspection portion of this proposed AD were accounted for in the regulatory evaluation of the AASFR final rule.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29069; Directorate Identifier 2007–NM–176–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, and –200C series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to maintain the continued structural integrity of the entire fleet of Model 737–100, –200, and –200C series airplanes.

Compliance

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

Service Information

(f) The term ''Revision E,'' as used in this AD, means Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007.

(g) The term ''Appendix,'' as used in this AD, means ''Appendix A Model 737–100/200/200C Airplanes,'' Original Release, dated May 2007, of Revision E.

Revision of the FAA-Approved Maintenance Inspection Program

(h) Before the accumulation of 66,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required damage tolerance rating (DTR) for each structural significant item (SSI) listed in Section 3.0, ''Flap and Support Structure (Flap Structure) SSI Information,'' of Appendix A. (The required DTR value for each SSI is listed in the Appendix.) The revision to the maintenance inspection program must include and must be implemented in accordance with the procedures in Section 3.0 of the Appendix, and in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application,'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision E. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Initial and Repetitive Inspections

(i) Before the accumulation of 66,000 total flight cycles, or within 4,000 flight cycles measured from 12 months after the effective date of this AD, whichever occurs later, do the applicable initial inspections to detect cracks of all SSIs, in accordance with Appendix A. Repeat the applicable inspections thereafter at the intervals necessary to obtain the required DTR specified in Appendix A.

Repair

(j) If any cracked structure is found during any inspection required by paragraph (i) of this AD, before further flight, repair the cracked structure using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

Inspection Program for Transferred Airplanes

(k) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (i) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each SSI must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been done once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each SSI required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair approval must specifically refer to this AD.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17283 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD]

RIN 2120–AA64

Airworthiness Directives; Alexandria Aircraft, LLC (Type Certificate No. 1A3 and A18CE Formerly Held by Bellanca, Inc.) Models 17–30, 17–31, 17–30A, 17–31A, and 17–31ATC Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 76–23–03–R1, which applies to certain Alexandria Aircraft, LLC (Bellanca) Models 17–30, 17–31, 17–30A, 17–31A, and 17–31ATC airplanes. AD 76–23–03–R1 currently requires you to inspect the muffler and tailpipe assemblies for cracks and inspect the exhaust assembly for freedom of movement at the ball joints. Since we issued AD 76–23–03–R1, we have received additional reports of in-flight exhaust system failures. Consequently, this proposed AD would reduce the exhaust system inspection

interval; require a more detailed inspection of the muffler; and require replacement, reconditioning, or repair of the exhaust system if cracks or defects are found. This proposed AD would also require rerouting of the magneto ''P'' leads. We are proposing this AD to detect and correct cracks in the exhaust system, which could result in heat damage to magneto electrical wiring and smoke in the cockpit. This failure could lead to loss of engine power and/or a fire in the engine compartment.

DATES: We must receive comments on this proposed AD by October 30, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

For service information identified in this proposed AD, contact Bellanca/Alexandria Aircraft, LLC, 2504 Aga Drive, Alexandria, MN 56308; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *www.bellanca-aircraft.com.*

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, ACE–118C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018, phone: (847) 294–7870, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–28431; Directorate Identifier 2007–CE–050–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

Several reports of exhaust system failures, which led to smoke in the cockpit and heat damage to components in the engine compartment, on Bellanca Model 17–30 and 17–30A airplanes caused us to issue AD 76–23–03–R1, Amendment 39–5454. AD 76–23–03–R1 currently requires you to do the following on Bellanca 17–30, 17–31, 17–30A, and 17–31A airplanes:

- Visually inspect the muffler and tailpipe assemblies for cracks, paying particular attention to the ball joint welds, the outlets of the muffler and resonator, and the support for the tailpipe assembly; and
- Inspect the exhaust system for freedom of movement at the ball joints by removing the tailpipe support bolts.

Since issuing AD 76–23–03–R1, we have received additional reports of in-flight exhaust system failures. Typically, the muffler fails at the weld which holds the ball joint to the muffler. The hot exhaust gases then escape and melt insulation on the wire bundle that includes the magneto ''P'' leads. When both the left and right magneto ''P'' leads short to ground, the engine stops.

This condition, if not corrected, could lead to loss of engine power and/or a fire in the engine compartment.

Relevant Service Information

We have reviewed Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007, and Bellanca/Alexandria Aircraft, LLC drawing SK 1072, dated April 2, 2007.

The service information describes procedures for:

- Inspecting the exhaust system;
- replacing and/or repairing exhaust system parts; and
- rerouting the magneto ''P'' leads.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 76–23–03 R1 with a new AD that would reduce the exhaust system inspection interval; require a more detailed inspection of the muffler; and require replacement, reconditioning, or repair of the exhaust system if cracks or defects are found. This proposed AD would also require rerouting of the magneto ''P'' leads. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 1,350 airplanes in the U.S. registry.

We estimate the proposed inspection of the exhaust system would affect 1,200 airplanes with the following costs:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	N/A	$320	$384,000

We estimate the proposed rerouting of the magneto ''P'' wires would affect 1,050 airplanes with the following costs:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	$500	$820	$861,000

We estimate the following costs to replace the exhaust system based on the results of the proposed inspection. The estimate is based on updating the entire exhaust system to the current production exhaust system. This proposed AD allows other means to do the required repairs/replacement which could cost less. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
8 work-hours × $80 per hour = $640	$4,000	$4,640

The estimated costs represented in the above actions include the costs associated with AD 76–23–03 R1 and the costs of this proposed AD. The added cost impact this AD imposes upon an owner/operator over that already required by AD 76–23–03 R1 is a more detailed inspection which requires more work-hours to accomplish and rerouting of the magneto ''P'' wires on certain models.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://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 Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 76–23–03 R1, Amendment 39–5454, and adding the following new AD:

Alexandria Aircraft, LLC (Type Certificate No. 1A3 and A18CE formerly held by Bellanca, Inc.): Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by October 30, 2007.

Affected ADs

(b) This AD supersedes AD 76–23–03 R1, Amendment 39–5454.

Applicability

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

Model	Serial numbers
17–30	all serial numbers.
17–30A	30263 through 301030.
17–31	all serial numbers.
17–31A	all serial numbers.
17–31ATC	all serial numbers.

Unsafe Condition

(d) This AD results from several accidents caused by exhaust system failures. We are proposing this AD to detect and correct cracks in the exhaust system, which could result in heat damage to magneto electrical wiring and smoke in the cockpit. This failure could lead to loss of engine power and/or a fire in the engine compartment.

Compliance

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

Actions	Compliance	Procedures
(1) For aircraft models and serial numbers listed below, inspect the exhaust system for cracks or other defects such as excessive wear. (i) Model 17–30, all serial numbers; ..... (ii) Model 17–30A, serial numbers 30263 through 301030;. (iii) Model 17–31, all serial numbers; and .. (iv) Model 17–31A, all serial numbers	Initially within the next 12 months after the effective date of this AD or within 25 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first. Then repetitively thereafter at intervals not to exceed 12 months or 50 hours TIS, whichever occurs first. Accomplishment of the actions in paragraph (e)(2)(i) or (e)(2)(ii) of this AD terminates the recurring inspections required in this paragraph for the replaced/reconditioned exhaust system (left and/or right side)..	Follow Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007.
(2) Repair or replace the exhaust system using any of the options listed below. (i) Option #1—replace the entire defective left and/or right muffler and tailpipe assembly(ies) with new parts as specified in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007. (ii) Option #2—replace the entire defective left and/or right muffler and tailpipe assembly(ies) with parts reconditioned to the new parts as specified in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007; or. (iii) Option #3—recondition or repair the defective left and/or right muffler and tailpipe assembly(ies) to their original configuration using FAA-approved methods and materials.	Before further flight after any inspection required in paragraph (e)(1) of this AD where a crack or other defect is found. The actions in paragraph (e)(2)(i) or (e)(2)(ii) of this AD terminates the recurring inspections required in paragraph (e)(1) this AD for the replaced/reconditioned exhaust system (left and/or right side).	Follow Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007
(3) For aircraft models and serial numbers listed below that do not have Bellanca/Alexandria Aircraft, LLC Service Kit 1067: Rerouting Right Magneto ''P'' Lead installed, reroute the magneto ''P'' leads. (i) Model 17–30A, serial numbers 30263 through 30998. (ii) Model 17–31A, all serial numbers; and (iii) Model 17–31ATC, all serial numbers ...	Within the next 12 months after the effective date of this AD or within 100 hours TIS after the effective date of this AD, whichever occurs first.	Follow Bellanca/Alexandria Aircraft, LLC Service Kit 1072 instructions located on drawing SK 1072, dated April 2, 2007, as referenced in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Michael Downs, Aerospace Engineer, ACE–118C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7870; fax: (847) 294–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Bellanca/Alexandria Aircraft, LLC, 2504 Aga Drive, Alexandria, MN 56308; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *www.bellanca-aircraft.com.* To view the AD docket, go to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD.

Issued in Kansas City, Missouri, on August 24, 2007.

Brian A. Yanez,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–17289 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2007–28633; Airspace Docket No. 07–ASW–7]

RIN 2120–AA66

Proposed Establishment of Restricted Area 3405; Sullivan, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Restricted Area 3405 (R–3405) at Sullivan, IN. The United States (U.S.) Navy requests that the FAA take action to establish R–3405 for the protection of nonparticipating aircraft from a tethered aerostat balloon used to deploy radar, electro-optic, camera, and other sensor packages at Naval Support Activity (NSA) Crane's Glendora Lake Test Facility.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Send comments on this proposal to the 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–2007–28633 and Airspace Docket No. 07–ASW–7, 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–2007–28633 and Airspace Docket No. 07–ASW–7) 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–2007–28633 and Airspace Docket No. 07–ASW–7.'' 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 NPRMs

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 at 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 Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRMs 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 January 31, 2007, the U.S. Navy requested that the FAA take action to establish R–3405 at Sullivan, IN. The requested action would provide airspace needed to separate nonparticipating aircraft from a tethered aerostat balloon. The balloon is used at various locations within NSA Crane's Lake Glendora Test Facility to deploy radar, electro-optic, camera, and other sensor packages.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to establish R–3405 over an area near Sullivan, IN. The restricted area would enhance safety by separating nonparticipating aircraft from tethered balloon operations conducted by the Lake Glendora Test Facility. The restricted area would be relatively small, covering less than 1 square nm and extending from the surface up to 2,000 feet MSL.

Section 73.34 of Title 14 CFR part 73 was republished in FAA Order 7400.8N, dated February 16, 2007.

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.

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

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

* * * * *

R–3405 Sullivan, IN [New]

Boundaries. Beginning at lat. 39°07′41″ N., long. 87°22′02″ W.; to lat. 39°07′41″ N., long. 87°21′29″ W.; to lat. 39°07′39″ N., long. 87°21′29″ W.; to lat. 39°07′39″ N., long. 87°21′26″ W.; to lat. 39°07′41″ N., long. 87°21′25″ W.; to lat. 39°07′41″ N., long. 87°21′12″ W.; to lat. 39°07′00″ N., long. 87°21′08″ W.; to lat. 39°07′00″ N., long. 87°21′46″ W.; to lat. 39°06′36″ N., long. 87°21′47″ W.; to lat. 39°06′36″ N., long. 87°22′03″ W.; to the point of beginning.

Designated altitudes. Surface up to and including 2,000 feet MSL.

Times of Designation. By NOTAM 24 hours in advance.

Controlling Agency. FAA, Terre Haute ATCT.

Using Agency. U.S. Navy, Naval Support Activity Crane

* * * * *

Issued in Washington, DC, August 24, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–17361 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917 and 1918

[Docket No. OSHA–2007–0044]

RIN 1218–AC08

Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment; Notice of Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposal; notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing on OSHA's proposed rule updating its personal protective equipment (PPE) design standards, which was published on May 17, 2007. It also establishes a date to file notices of intention to appear at the informal public hearing and sets requirements for submitting hearing testimony and documentary evidence in advance of the hearing.

DATES: *Informal public hearing.* OSHA will hold an informal public hearing in Washington, DC, beginning at 9 a.m. on December 4, 2007.

Notices of intention to appear. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than October 1, 2007.

Hearing testimony and documentary evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than November 1, 2007.

ADDRESSES: You may submit notices of intention to appear, hearing testimony, and documentary evidence—identified by docket number (OSHA–2007–0044) or RIN number (1218–AC08)—by any of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: If your written submission is 10 pages or fewer, you may fax it to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery, and courier service: Submit three copies to the OSHA Docket Office, Docket No. OSHA–2007–0044, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All submissions received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting notices of intention to appear, the text of testimony, and documentary evidence, see the Informal Public Hearing heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments and background documents that can be posted go to *http://www.regulations.gov*. Written comments received, notices of intention to appear, and all other material related to the development of the proposed standard will be available for inspection and copying in the public record in the Docket Office at the address listed previously.

Hearing: The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: General information and press inquiries: Mr. Kevin Ropp, Director, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Technical information: Mr. Ted Twardowski, Office of Systems Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2070 or fax (202) 693–1663. Hearings: Ms. Veneta Chatmon, Office of Communications, Room N3647; OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Electronic copies of this Federal Register notice, as well as news, are available at OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: On May 17, 2007, OSHA published a proposal that would update OSHA standards related to certain types of personal protective equipment (72 FR 27771). Interested parties were given until July 16, 2007, to submit comments on the proposal. The 3M Company, the American National Standards Institute (ANSI), ASTM International, and the International Safety Equipment Association (ISEA) all requested an informal public hearing on the proposal.

1. Issues

OSHA has proposed to update its standards requiring that certain types of personal protective equipment (PPE) meet specifically identified ANSI standards. OSHA proposed deleting the references to the ANSI standards from the regulatory text, replacing them with a requirement to use PPE constructed in accordance with good design standards, and adding criteria for determining what constitutes a good design standard within the meaning of the proposed standard. The proposed rule also included a non-mandatory appendix listing those national consensus standards that OSHA has determined meet the criteria of a good design standard.

ISEA has objected to OSHA's proposal because they believe that modifying the PPE design standards in this way would eliminate baseline performance requirements for PPE, potentially reducing employee protection and making compliance more difficult for employers. The 3M Company, ANSI and ASTM International also requested an informal public hearing.

2. Informal Public Hearing

In response to the objections received, OSHA is convening an informal public hearing on the proposed rule. The hearing will convene at 9 a.m. on December 4, 2007. OSHA invites interested parties to provide oral testimony and documentary evidence at the informal public hearing. This section describes the procedures the public must use to participate in the hearing.

The legislative history of section 6 of the OSH Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearings is an ALJ, and questioning by interested parties is allowed on crucial issues, the proceeding is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the hearing is an informal administrative proceeding, rather than adjudicative one in which the technical rules of evidence would apply, because its primary purpose is to gather and clarify information. The regulations that govern public hearings, and the prehearing guidelines issued for this hearing, will ensure participants fairness and due process, and also will

facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will favor development of the record.

Conduct of the hearing will conform to the provisions of 29 CFR part 1911, ''Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards.'' The regulation at 29 CFR 1911.4, ''Additional or Alternative Procedural Requirements,'' specifies that the Assistant Secretary may, on reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. Although the ALJs who preside over these hearings make no decision or recommendation on the merits of OSHA's proposal, they do have the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questioning. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA; during the second part of this period, they may submit briefs, arguments, and summations.

Notice of Intention to Appear to Provide Testimony at the Informal Public Hearing. Interested parties who intend to provide oral testimony at the informal public hearings must file a written notice of intention to appear by October 1, 2007. In addition to containing the information required by the **ADDRESSES** section above, this notice must also provide the: name, address, and telephone number of each individual who will provide testimony; capacity (for example, the name of the establishment or organization the individual is representing and the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; a brief statement of the position that the individual will take with respect to the issue identified in this Notice; and a brief summary of any documentary evidence the individual intends to present.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a complete notice of intention to appear may ask questions and participate fully at the hearing. If time permits and at the presiding ALJ's discretion, a party who did not file a notice of intention to appear may be allowed to testify at the hearing.

Hearing Testimony and Documentary Evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than November 1, 2007. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, before the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questioning at a later time.

Certification of the Record and Final Determination after the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final rule based on the entire record.

Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–17183 Filed 8–30–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, HI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend the regulations at 33 CFR 334.1380 for the existing danger zone in the vicinity of Kaneohe Bay, Hawaii. The proposed amendment will reflect the current operational and safety procedures at the Ulupau Crater Weapons Training Range and highlight a change in the hours that weapons firing may occur. These regulations are necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the United States Marine Corps.

DATES: Written comments must be submitted on or before October 1, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0027, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2007–0027, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0027. All comments received will be included in the public docket without change and may be made available on-line at

http://www.regulations.gov, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202–761–4922, or Ms. Susan A. Meyer, Corps of Engineers, Honolulu District, Regulatory Branch, at 808–438–2137.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the danger zone regulations at 33 CFR 334.1380 to reflect current operational and safety procedures at the Ulupau Crater Weapons Training Range, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii and highlight a change in the hours that weapons firing may occur. The proposed amendment will also provide more detailed times, dates, and extents of restrictions.

Procedural Requirements

a. Review under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the economic impact of the amendment to this danger zone would have practically no impact on the public, no anticipated navigational hazard, or no interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.1380 to read as follows:

§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

(a) *The danger zone*. The waters within a sector extending seaward a distance of 3.8 nautical miles between radial lines bearing 001° true and 129° true, respectively, from a point on Mokapu Peninsula at latitude 21° 27′ 10″ N, longitude 157° 43′ 45″ W, exclusive of the existing 500-yard wide prohibited area. The interface between the existing 500-yard prohibited area and this danger zone is defined by five points having the following coordinates:

Point A: Latitude 21° 29′ 53″ N, Longitude 157° 43′ 37″ W
Point B: Latitude 21° 30′ 39″ N, Longitude 157° 42′ 30″ W
Point C: Latitude 21° 28′ 34″ N, Longitude 157° 40′ 04″ W
Point D: Latitude 21° 28′ 10″ N, Longitude 157° 41′ 05″ W
Point E: Latitude 21° 35′ 31″ N, Longitude 157° 41′ 23″ W

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 11 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the MCBH Range Manager, AC/S G–3 (telephone number 808–257–8816/17).

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is scheduled. Passage of vessels through the danger zone when weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCBH Kaneohe Bay military personnel utilizing a bull-horn from a Marine helicopter, hailing the vessel via VHF channel 16 or U.S. Navy surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The Enforcing Agency.* The foregoing regulations shall be enforced by the Commanding General, MCBH Kaneohe Bay and such agencies as he/she may designate.

Dated: August 23, 2007.

Mark F. Sudol,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–17155 Filed 8–30–07; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0399; FRL–8462–3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; State Implementation Plan Revision To Implement the Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Connecticut State Implementation Plan (SIP) submitted on April 26, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006 and December 13, 2006. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Connecticut. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plan (CAIR FIP) concerning NO_X ozone-season emissions for Connecticut. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

DATES: Comments must be received on or before October 1, 2007.

ADDRESSES: Submit your comments, identified by FDMS Docket ID No. EPA–R01–OAR–2007–0399, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''FDMS Docket ID No. EPA–R01–OAR–2007–0399'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''FDMS Docket ID No. EPA–R01–OAR–2007–0399''. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. In addition to publicly available docket materials available electronically in *http://www.regulations.gov*, the hard copy of these materials, including the state submittal, is available at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov.*

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I. What Action Is EPA Proposing To Take?

EPA is proposing to approve a revision to Connecticut's SIP, submitted on April 26, 2007. This SIP revision includes a new regulation, Regulations of Connecticut State Agencies (RCSA) section 22a–174–22c, ''The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program'' (herein called ''Connecticut's proposed CAIR program''), repeal of RCSA section 22a–174–22a (''The Connecticut NO_X Budget Program''), as of May 1, 2009, and repeal of RCSA section 22a–174–22b, ''The Connecticut Post-2002 NO_X Budget Program'' (herein called the ''Connecticut NO_X SIP Call trading program''), as of May 1, 2010. In its SIP revision, Connecticut would meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade program addressing NO_X ozone-season emissions. EPA is proposing to determine that the Connecticut SIP as revised will meet the applicable requirements of CAIR. Any final action approving the SIP will be taken by the Regional Administrator for Region 1. As a consequence of the SIP Approval, the Administrator of EPA will also issue a final rule to withdraw the FIP concerning NO_X ozone-season emissions for Connecticut. This action will delete and reserve 40 CFR 52.386. The withdrawal of the CAIR FIP for Connecticut is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIP was premised on a deficiency in the SIP for Connecticut. Once the SIP is fully approved, EPA no longer has authority for the FIP. Thus, EPA will not have the option of maintaining the FIP following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIP.

The Connecticut Department of Environmental Protection (DEP) has requested that EPA ''parallel process'' Connecticut's proposed CAIR SIP revision. Under this procedure, EPA prepared this action before the State's final adoption of the regulations included in the SIP revision. The DEP held a public hearing on its proposed CAIR SIP revision on October 19, 2006. The DEP has prepared a response to the comments received on its proposal and has developed a ''post-hearing final draft'' version of the regulations dated April 10, 2007. This is the version of the regulations included in Connecticut's April 26, 2007 SIP submittal to EPA and the subject of EPA's proposal.

On June 19, 2007, the Connecticut DEP received adverse comments regarding the allocation methodology in its proposed CAIR program. Consequently, the DEP may revise its proposed regulations before final promulgation. After the DEP submits its final adopted regulations, EPA will review these final regulations to determine whether they differ from the ''post-hearing final draft'' version that is the subject of this proposal. If Connecticut's final regulations do in fact differ from the ''post-hearing final draft'' version, then EPA would need to determine whether any of the changes are significant. Ordinarily, changes that are limited to the allocation methodology would not be deemed significant for SIP approval purposes, assuming the methodology does not lead to allocations in excess of the total state budget. Based on EPA's determination regarding the significance of any changes in the final regulations, EPA would then decide whether it is appropriate to prepare a final rule and describe the changes in the final rulemaking action, or re-propose action based on the state's final adopted regulations.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone-season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically

replace or supplement certain CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all units from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone-season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

V. Analysis of Connecticut's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone-season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1 of the CAIR program (2009–2014) and by 0.125 lb/mmBtu, for phase 2 of the CAIR program (2015 and thereafter) to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone-season budgets from the regional budgets using State heat input data adjusted by fuel factors. Connecticut, however, is only required to participate in the CAIR NO_X ozone season program and not the CAIR NO_X annual or SO_2 trading programs. Therefore, only CAIR NO_X ozone-season budgets apply to the Connecticut CAIR program.

In today's action, EPA is proposing approval of Connecticut's SIP revision, which will be codified at RCSA section 22a–174–22c. This SIP revision adopts the budget established for the State in CAIR, i.e., 2,559 tons of NO_X ozone-season emissions for CAIR phases 1 and 2, plus an additional 132 tons of NO_X ozone-season emissions for both phases 1 and 2 to account for NO_X emissions from ''non-EGUs'' from the Connecticut NO_X SIP Call trading program (see section V.B. below). The total NO_X ozone-season budget is therefore 2,691 tons of NO_X ozone-season emissions for CAIR phases 1 and 2. Connecticut's SIP revision sets this budget as the total number of allowances (with each allowance authorizing one ton of NO_X ozone-season emissions) available for allocation for each year under the EPA-administered CAIR cap-and-trade program.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X ozone-season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone-season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program. Connecticut has decided to exercise the option of including all its NO_X SIP Call units in its State CAIR program. Therefore, the Connecticut CAIR SIP revision includes amendments to the Connecticut NO_X SIP Call trading

program (RCSA section 22a–174–22b) such that the NO_X SIP Call trading program applies for the control periods from 2003 through 2008, but is then superseded by the Connecticut CAIR program beginning with the control period in 2009.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, Connecticut proposes to implement its CAIR budgets by requiring EGUs (as well as ''non-EGUs'' from its NO_X SIP Call trading program, as discussed below) to participate in EPA-administered cap-and-trade programs for NO_X ozone-season emissions. Connecticut is proposing a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for NO_X ozone season emissions.

C. Applicability Provisions for Non-EGU NO_X SIP Call Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR (herein called ''non-EGUs''). EPA advises States exercising this option to add the applicability provisions in the State's NO_X SIP Call trading rule for ''non-EGUs'' to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less) that the State currently requires to be in the NO_X SIP Call trading program.

In the SIP revision, Connecticut proposes to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all units in the State's NO_X SIP Call trading program, plus Exeter Energy, which is a waste-tire-fired unit that EPA has determined meets the definition of a NO_X SIP Call unit and a CAIR unit. Units in the Connecticut NO_X SIP Call trading program include EGUs of 15 MW or more and non-EGUs (such as industrial boilers and combustion turbines) with a maximum design heat input of 250 MMBtu/hr or more. These units will be included in the Connecticut CAIR program beginning with the control period in 2009.

EPA has determined that Connecticut's proposed SIP revision includes the allowable CAIR applicability provisions relating to adding all NO_X SIP Call trading-program units to the Connecticut CAIR NO_X ozone season program.

D. NO_X Allowance Allocations

Deadlines: There is one technical flaw in the SIP revision, but EPA is proposing to approve the SIP revision despite this flaw. CAIR requires states to submit to EPA the initial allocations for EGUs that started operation before 2001 by October 31, 2006. Connecticut's proposed SIP revision does not meet this requirement, nor did the state in fact submit those allocations by this date. However, the purpose of this date was to allow EPA sufficient time to process the allocations data. EPA now has the allocations, and no outside party was prejudiced by Connecticut's failure to meet this date.

Specifically, according to 40 CFR 51.123(aa)(2)(iii)(C), for a full SIP revision, ''[t]he State's methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011.'' Connecticut's proposed SIP revision does not meet this requirement because it does not require that the State submit the 2009–2011 allocations for pre-2001 EGUs by October 31, 2006. Instead, Connecticut's SIP revision requires that it submit, and in fact it did submit, these allocations by April 30, 2007, the deadline that is applicable to abbreviated SIP revisions under 40 CFR 51.123(ee)(2)(ii)(C).

Since Connecticut has submitted a full SIP revision, not an abbreviated SIP revision, this failure to require that the State will submit allocations by October 31, 2006 is technically a deficiency in the SIP. However, this does not render the SIP unapprovable. The purpose of the October 31, 2006 deadline, as mentioned above, was to allow EPA's Clean Air Markets Division sufficient time to process the allocations. At this point, the deadline has elapsed; Connecticut has, in fact, submitted its allocations; and the Clean Air Markets Division is fully able to process the allocations despite having received them later than CAIR envisions. Potentially regulated entities received ample notice of Connecticut's plan for allocations when the State's program was submitted for public comment on the state level. Furthermore, in the context of this action, it makes no difference whether EPA would have received the 2009–2011 allocations in April of this year or October of last year, since EPA has, in fact, received them well before the date of this document. No party is prejudiced by the deficiency, since the deadline has passed, and any interested party has a full opportunity to comment on any aspect of this proposed action. Moreover, with Connecticut's April 2007 submission of the allocations, EPA will still be able—after final approval of the SIP revision—to record them in 2007 and, thereby, provide the allowances to owners and operators sufficiently in advance of the 2009–2011 control periods. In sum, EPA has determined that the interests of the public, potentially regulated entities, and EPA itself, including those interests which 40 CFR 51.123(aa)(2)(iii)(C) sought to protect, have been adequately met by the proposed SIP revision's adoption and, more importantly, actual submission of 2009–2011 allocation data by April 30, 2007. Consequently, EPA proposes to approve this SIP revision despite Connecticut's failure to meet the requirements of 40 CFR 51.123(aa)(2)(iii)(C).

NO_X allowance-allocation methodology: Under the NO_X allowance-allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone-season allowances are allocated to units that have operated for five years (i.e., ''existing units''), based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance-allocation methodology that will be used to allocate allowances to sources in

the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance-allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

In the SIP revision, Connecticut proposes to replace the provisions of the CAIR NO_X ozone-season model trading rule concerning allowance allocations with its own methodology. For most fossil-fuel-fired units, Connecticut proposes to allocate NO_X ozone-season allowances largely based on electric and thermal output, rather than heat input. For cogeneration units, certain industrial boilers or indirect heat exchangers, and waste-tire-fired units, Connecticut proposes to allocate allowances based on the unit's actual or permitted NO_X emission rate. Connecticut also provides a percentage of allowances for an energy efficiency/renewable energy set-aside and a new unit set-aside.

(1) What Types of Set-Asides Are Included in Connecticut CAIR?

In the SIP revision, Connecticut proposes to include in its CAIR program both an energy efficiency/renewable energy set-aside (EERESA) to encourage Energy Efficiency Projects (EEPs), Renewable Energy Projects (REPs), and Qualifying Other Project (QOPs), and a new unit set-aside to allow for addition of new units.

Connecticut defines a new unit as any fossil-fuel-fired unit that began operating on or after January 1, 2006 and that serves a generator that produces electricity at an output of 15 MWe or more. A unit is considered to be a new unit for 6 ozone-season control periods (or portion thereof) following the date of initial operation. This change in status means that a Connecticut CAIR ''new unit'' will then become a Connecticut CAIR ''existing unit.''

Connecticut proposes to establish a new unit set-aside at 7 percent of the State's CAIR budget during CAIR phase 1 (2009–2014), and at 5 percent of the State's CAIR budget during CAIR phase 2 (2015 and thereafter). Therefore, the new unit set-aside would include 200 CAIR NO_X ozone-season allowances during CAIR phase 1, and 134 allowances during CAIR phase 2.

Connecticut proposes to establish an EERESA at 10 percent of the State's CAIR budget for both phases of the CAIR program. Therefore, the EERESA would include 268 CAIR NO_X allowances for the 2009 and subsequent ozone-season control periods.

(2) Methodology for Allocating CAIR Allowances

Connecticut is proposing to replace the provisions of the CAIR NO_X ozone-season model trading rule concerning allowance allocations with a largely output-based methodology. Under Connecticut's proposed SIP revision, most fossil-fuel-fired units would receive allocations based on their average net electricity output, without adjustments for fuel type. For cogeneration, industrial, and waste-tire-fired units, Connecticut proposes to allocate allowances based on the units' actual or permitted NO_X emission rates and average heat input.

EPA has identified two potential ambiguities in the allocation provisions of Connecticut's proposed CAIR program, and asked the Connecticut DEP for its interpretations. The Connecticut DEP (Wendy Jacobs, Bureau of Air Management) responded by electronic mail on June 20, 2007. After reviewing the Connecticut DEP's interpretations as stated in that electronic mail message, EPA interprets the provisions involved as follows.

First, the proposed regulation uses the term ''NO_X allowance'' in three places. See RCSA sections 22a–174–22c(c)(2), 22a–174–22c(c)(3)(B), 22a–174–22c(g)(4). However, this term is defined neither in the proposed SIP revision nor in the CAIR model rule. According to the Connecticut DEP, the term ''NO_X allowance'' when used in RCSA section 22a–174–22c is identical to the term ''CAIR NO_X Ozone Season allowance'' as defined at 40 CFR 96.302. EPA adopts this interpretation.

Second, under RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A), there is no limit to the number of allowances that can be allocated to cogeneration units, industrial units, waste-tire-fired units, or Phase I units in any control period. In theory, these provisions could operate to allocate more allowances to cogeneration units, industrial units, waste-tire-fired units, or Phase I units than are available in Connecticut's CAIR NO_X ozone-season budget. That said, RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3), which authorize the Connecticut DEP to allocate CAIR NO_X ozone season allowances, state the maximum number of allowances available for allocation for all units other than new units.

According to the Connecticut DEP, RCSA sections 22a–174–22c(e)(7)(A) and 22a–174–22c(e)(8)(A) are modeled after analogous provisions in the Connecticut NO_X Budget Program and the Connecticut NO_X SIP Call trading program, and under those programs, the allocations for cogeneration units and industrial units have never resulted in a shortage of allowances for units in other categories. The DEP suggests that if the data support allocating allowances to cogeneration units, industrial units and waste-tire-fired units on an output basis, or if there are a significant number of new entrants into these categories, DEP may revise its CAIR program to allocate to these categories on an output basis.

For purposes of construing Connecticut's proposed SIP revision, EPA interprets RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) to prohibit the Connecticut DEP from allocating allowances in excess of the total state budget, and to control in any conflict with RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A). Thus, if the operation of RCSA sections 22a–174–22c(e)(7)(A)–(B) and/or 22a–174–22c(e)(8)(A) were to yield allowances for cogeneration units, industrial units, waste-tire-fired units, or Phase I units in excess of the state budget, either by themselves or in combination with allocations to other categories, then RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) would require the Connecticut DEP to recalculate or reallocate allowances so as not to exceed the state budget.

EPA is relying on this interpretation of Connecticut's proposed SIP revision for the purposes of approving it as meeting the requirements of the Act and the CAIR program. If EPA does not receive comments to the contrary from the Connecticut DEP or any other party during the public comment period, the interpretations stated above will represent EPA's formal interpretations of the SIP provisions at issue for purposes of federal law.

(3) NO_X Reporting Requirements

Under the CAIR model rule, facilities that are subject to the Acid Rain Program or the CAIR NO_X and SO_2 annual trading programs must report emissions data year-round, but facilities that are only subject to the NO_X ozone season trading program need only submit NO_X emission data to the State during the ozone season. As noted above, Connecticut is only required to

participate in the CAIR NO_X ozone season program. However, Connecticut's proposed CAIR program requires additional data reporting beyond that required by the model CAIR NO_X ozone season rule. Specifically, all units would be required to provide annual reports of net electricity output and useful steam output (or an estimate of this steam output) for each control period. New CAIR units would be required to provide annual estimates of the total number of hours of operation for each control period. Units that are not subject to an Acid Rain emissions limitation and that are monitoring NO_X emissions using a CEMS (but not those that are not monitoring using a CEMS) would be required to report emissions on a year-round basis.

EPA has determined that these modifications of the CAIR NO_X ozone season trading rule in regard to reporting of output data are acceptable.

(4) Submittal of CAIR Allocations to EPA

In the SIP revision, Connecticut requires the State to provide EPA with existing-unit CAIR allocations for each control period beyond 2011 by October 31st of each year beginning in 2008. For units starting operation after January 1, 2001 that are treated as new units, the State would notify EPA of each unit's allocation by July 31st of the year for which the CAIR allowances are allocated. EPA has determined that these proposed reporting deadlines are acceptable.

E. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

The Connecticut CAIR SIP does not include opt-in provisions. Under the model CAIR NO_X ozone season trading rule, the energy-output methodology that Connecticut proposes to use to allocate allowances cannot be used for opt-in sources.

VI. Proposed Action

EPA is proposing to approve Connecticut's full CAIR SIP revision submitted on April 26, 2007, including new RCSA section 22a–174–22c (''The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program''), repeal of existing RCSA section 22a–174–22a (''The Connecticut NO_X Budget Program''), as of May 1, 2009, and repeal of existing RCSA section 22a–174–22b (''The Connecticut Post-2002 NO_X Budget Program''), as of May 1, 2010. Under this SIP revision, Connecticut is choosing to participate in the EPA-administered cap-and-trade program for NO_X ozone-season emissions. Connecticut's proposed SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X ozone-season emissions. EPA is proposing to determine that the SIP as revised will meet the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIP concerning NO_X ozone-season emissions for Connecticut. This action will delete and reserve 40 CFR 52.386.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to approve pre-existing requirements under State law and would not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposal also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 22, 2007.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. E7–17196 Filed 8–30–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7733 and FEMA–D–7816]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
Lowndes County, Georgia, and Incorporated Areas				
Sugar Creek	At Baytree Road	None	*145	City of Remerton.
	Approximately 1,100 feet downstream of the confluence of One Mile Branch.	None	*148	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Remerton

Maps are available for inspection at 1757 Poplar Street, Remerton, GA 31601.
Send comments to The Honorable Peggy Seifert, Mayor, City of Remerton, 1757 Poplar Street, Remerton, GA 31601.

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
Stanly County, North Carolina and Incorporated Areas				
Big Bear Creek	At the confluence with Long Creek	None	+295	Unincorporated Areas of Stanly County.
	Approximately 1,350 feet upstream of State Highway 49.	None	+645	
Tributary 1	At the confluence with Big Bear Creek	None	+369	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Big Bear Creek.	None	+384	
Tributary 2	At the confluence with Big Bear Creek	None	+395	Unincorporated Areas of Stanly County.
	Approximately 0.6 mile upstream of the confluence with Big Bear Creek.	None	+426	
Tributary 3	At the confluence with Big Bear Creek	None	+441	Unincorporated Areas of Stanly County.
	Approximately 710 feet upstream of Peaceful Lane	None	+483	
Tributary 4	At the confluence with Big Bear Creek	None	+580	Unincorporated Areas of Stanly County.
	Approximately 1.0 mile upstream of Ridenhour Road (State Road 1433).	None	+606	
Big Cedar Creek	At the confluence with Rocky River	None	+227	Unincorporated Areas of Stanly County.
	Approximately 1,240 feet upstream of West Whitley Street (State Road 1933).	None	+283	
Tributary 1	At the confluence with Big Cedar Creek	None	+229	Unincorporated Areas of Stanly County.
	Approximately 0.4 mile upstream of the confluence with Big Cedar Creek.	None	+241	
Camp Branch	At the confluence with Rocky River	None	+449	Unincorporated Areas of Stanly County.
	Approximately 60 feet downstream of Tite Road (State Road 1152).	None	+455	
Cedar Creek	At the confluence with Pee Dee River (Lake Tillery)	None	+279	Unincorporated Areas of Stanly County, Town of Norwood.
	Approximately 0.6 mile upstream of Railroad	None	+422	
Coldwater Branch	At the confluence with Rocky River	None	+327	Unincorporated Areas of Stanly County.
	Approximately 340 feet upstream of Old Sandbar Road (State Road 1100).	None	+330	
Coopers Creek	At the confluence with Rocky River	None	+254	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of Old Davis Road (State Road 1943).	None	+328	
Curl Tail Creek	At the confluence with Riles Creek	None	+572	Unincorporated Areas of Stanly County, Town of Richfield, Village of Misenheimer.
	Approximately 510 feet downstream of Merner Terrace.	None	+655	
East Prong Rock Hole Creek.	At the confluence with Rock Hole Creek	None	+488	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 0.5 mile upstream of West Stanly Street.	None	+569	
Hardy Creek	At the confluence with Rocky River	None	+240	Unincorporated Areas of Stanly County.
	Approximately 150 feet upstream of the confluence of Ugly Creek.	None	+383	
Island Creek	At the confluence with Rocky River	None	+354	Unincorporated Areas of Stanly County, City of Locust.
	Approximately 1.1 miles upstream of Pless Mill Road (State Road 1136).	None	+537	
Tributary 1	At the confluence with Island Creek	None	+368	Unincorporated Areas of Stanly County.
	Approximately 520 feet downstream of Drye-Hill Road (State Road 1120).	None	+412	

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 2	At the confluence with Island Creek	None	+388	Unincorporated Areas of Stanly County.
	Approximately 0.4 mile upstream of the confluence with Island Creek.	None	+412	
Jacks Branch	At the confluence with Rocky River	None	+252	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of the confluence with Rocky River.	None	+281	
Jacobs Creek	At the confluence with Pee Dee River (Lake Tillery)	None	+279	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 2.5 miles upstream of Indian Mound Road (State Road 1740).	None	+379	
Little Bear Creek (North)	At the confluence with Big Bear Creek	None	+470	Unincorporated Areas of Stanly County.
	Approximately 450 feet upstream of NC 73 Highway.	None	+523	
Little Bear Creek (South)	At the confluence with Long Creek	None	+334	Unincorporated Areas of Stanly County.
	Approximately 1.7 miles upstream of Canton Road (State Road 1249).	None	+524	
South Tributary 1	At the confluence with Little Bear Creek (South)	None	+417	Unincorporated Areas of Stanly County.
	Approximately 600 feet upstream of NC 24–27 Highway.	None	+443	
South Tributary 2	At the confluence with Little Bear Creek (South)	None	+452	Unincorporated Areas of Stanly County.
	Approximately 1,170 feet upstream of Canton Road (State Road 1249).	None	+510	
Little Cedar Creek	At the confluence with Rocky River	None	+226	Unincorporated Areas of Stanly County, Town of Norwood.
	Approximately 0.4 mile upstream of U.S. Highway 52.	None	+266	
Little Creek (North)	At the confluence with Big Bear Creek	None	+444	Unincorporated Areas of Stanly County.
	Approximately 1,220 feet upstream of Old Concord Road (State Road 1236).	None	+551	
Little Creek (South)	At the confluence with Long Creek	None	+302	Unincorporated Areas of Stanly County.
	Approximately 900 feet upstream of Western Road (State Road 1959).	None	+425	
Little Long Creek	Approximately 450 feet downstream of Efird Street	+428	+429	Unincorporated Areas of Stanly County, City of Albemarle, Town of New London.
	Approximately 1,480 feet upstream of Railroad	None	+569	
Little Meadow Creek	Approximately 1.1 miles downstream of State Highway 200.	None	+551	City of Locust.
	Approximately 1,200 feet downstream of Mauney Road (State Road 2625).	None	+581	
Little Mountain Creek	At the confluence with Mountain Creek	None	+384	Unincorporated Areas of Stanly County, Town of Badin.
	Approximately 1.1 miles upstream of Barnhardt Road (State Road 1545).	None	+588	
Long Creek	At the confluence with Rocky River	None	+284	Unincorporated Areas of Stanly County, City of Albemarle, Town of Richfield, Village of Misenheimer.
	Approximately 0.7 mile upstream of Matton Grove Church Road (State Road 1454).	None	+637	
Tributary 1	Approximately 500 feet upstream of the confluence with Long Creek.	None	+484	Unincorporated Areas of Stanly County.
	Approximately 1,170 feet upstream of Pennington Road (State Road 1401).	None	+509	
Tributary 2	Approximately 1,500 feet upstream of the confluence with Long Creek.	None	+485	Unincorporated Areas of Stanly County.

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.9 mile upstream of the confluence with Long Creek.	None	+508	
Tributary 3	At the confluence with Long Creek	None	+530	Unincorporated Areas of Stanly County.
	Approximately 650 feet downstream of Sunnybrook Road.	None	+553	
Meadow Creek	At the upstream side of Reed Mine Road (State Road 1100).	None	+495	City of Locust.
	Approximately 0.9 mile upstream of Reed Mine Road (State Road 1100).	None	+511	
Melchor Branch	At the confluence with Little Long Creek	+446	+448	City of Albemarle.
	Approximately 480 feet upstream of North Sixth Street.	+487	+486	
Tributary 1	Just upstream of Fox Run Drive	+514	+524	City of Albemarle.
	Approximately 160 feet upstream of Montgomery Avenue.	None	+557	
Tributary 1A	At the confluence with Melchor Branch Tributary 1	None	+536	City of Albemarle.
	Approximately 550 feet upstream of Montgomery Avenue.	None	+554	
Mountain Creek	At the confluence with Pee Dee River	None	+284	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 60 feet upstream of State Highway 740.	None	+708	
Tributary 1	At the confluence with Mountain Creek	None	+377	Unincorporated Areas of Stanly County.
	Approximately 300 feet upstream of Stony Hill Road (State Road 1729).	None	+407	
Pee Dee River	At the Anson/Montgomery/Richmond/Stanly County boundary.	None	+220	Unincorporated Areas of Stanly County, Town of Norwood.
	At the confluence of Yadkin River and Uwharrie River.	None	+287	
Tributary 6	At the confluence with Pee Dee River	None	+229	Unincorporated Areas of Stanly County.
	Approximately 150 feet upstream of Railroad	None	+264	
Pole Bridge Creek	At the confluence with Little Bear Creek (North)	None	+477	Unincorporated Areas of Stanly County.
	Approximately 0.7 mile upstream of Lambert Road (State Road 1231).	None	+570	
Poplin Creek	At Aquadale Road	+428	+429	City of Albemarle.
	Approximately 630 feet upstream of Dr. Martin Luther King Jr. Drive.	None	+501	
Tributary 1	Approximately 250 feet upstream of the confluence with Poplin Creek.	None	+428	City of Albemarle.
	Approximately 300 feet upstream of East North Street.	None	+483	
Pumpkin Creek	At the confluence with Rocky River	None	+426	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Rocky River.	None	+444	
Ramsey Creek	At the confluence with Big Bear Creek	None	+369	Unincorporated Areas of Stanly County.
	Approximately 1,270 feet upstream of Canton Road (State Road 1249).	None	+543	
Riles Creek	Approximately 500 feet upstream of Rowan/Stanly County boundary.	None	+572	Unincorporated Areas of Stanly County, Town of Richfield.
	Approximately 1.3 miles upstream of Willie Road	None	+590	
Rock Creek	At the upstream side of Rock Creek Park Drive	+429	+430	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 1,000 feet upstream of Railroad	None	+446	
Rock Hole Branch	At the confluence with Rock Hole Creek	None	+458	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 2.3 miles upstream of the confluence with Rock Hole Creek.	None	+544	

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
Rock Hole Creek	At the confluence with Rocky River	None	+367	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 480 feet upstream of Polk Ford Road.	None	+489	
Rocky River	At the confluence with Pee Dee River	None	+220	Unincorporated Areas of Stanly County.
	Approximately 0.8 mile upstream of the confluence of Muddy Creek.	+482	+481	
Tributary 1	At the confluence with Rocky River	None	+220	Unincorporated Areas of Stanly County.
	Approximately 0.8 mile upstream of the confluence with Rocky River.	None	+245	
Tributary 3	At the confluence with Rocky River	None	+237	Unincorporated Areas of Stanly County.
	Approximately 710 feet upstream of Loop Road (State Road 1982).	None	+248	
Tributary 8	At the confluence with Rocky River	None	+350	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Rocky River.	None	+364	
Running Creek	At the confluence with Big Bear Creek	None	+467	Unincorporated Areas of Stanly County.
	Approximately 0.8 mile upstream of Five Point Road (State Road 1206).	None	+540	
Scaly Bark Creek	At the confluence with Long Creek	None	+384	Unincorporated Areas of Stanly County.
	Approximately 0.9 mile upstream of St. Martin Road (State Road 1963).	None	+416	
South Ugly Creek	At the confluence with Hardy Creek	None	+268	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of the confluence with Hardy Creek.	None	+311	
Stony Run	At the confluence with Big Bear Creek	None	+339	Unincorporated Areas of Stanly County, Town of Oakboro, Town of Red Cross.
	Approximately 140 feet upstream of Running Creek Church Road (State Road 1134).	None	+636	
Tributary 1	At the confluence with Stony Run	None	+445	Unincorporated Areas of Stanly County.
	Approximately 1,120 feet upstream of Liberty Hill Church Road (State Road 1115).	None	+469	
Town Creek	At the confluence with Little Long Creek	+446	+448	Unincorporated Areas of Stanly County, City of Albemarle, Town of New London.
	Approximately 1,890 feet upstream of Henderson Road (State Road 1436).	None	+530	
Tributary 1	At the confluence with Town Creek	None	+516	Unincorporated Areas of Stanly County.
	Approximately 1,060 feet upstream of Burris-Burleson Road (State Road 1437).	None	+546	
Ugly Creek	At the confluence with Hardy Creek	None	+380	Unincorporated Areas of Stanly County.
	Approximately 1,200 feet upstream of South Stanly School Road (State Road 1922).	None	+407	
Yadkin River	At the confluence with Pee Dee River and Uwharrie River.	None	+287	Unincorporated Areas of Stanly County, Town of Badin.
	Approximately 500 feet downstream of State Highway 49/8.	None	+566	

* National Geodetic Vertical Datum.
# Depth in feet above ground
+ North American Vertical Datum

ADDRESSES

City of Albemarle

Maps are available for inspection at City of Albemarle Engineering Department, 157 North Second Street, Albemarle, North Carolina.

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to The Honorable Elbert Whitley, Mayor of the City of Albemarle, P.O. Box 190, Albemarle, North Carolina 28001.

City of Locust

Maps are available for inspection at Locust City Hall, 211 Town Centre, Locust, North Carolina.
Send comments to The Honorable Harold Greene, Mayor of the City of Locust, P.O. Box 190, Locust, North Carolina 28097.

Town of Badin

Maps are available for inspection at Badin Town Hall, 36 Falls Road, Badin, North Carolina.
Send comments to The Honorable James L. Harrison, Mayor of the Town of Badin, P.O. Box 707, Badin, North Carolina 28009.

Town of Norwood

Maps are available for inspection at Norwood Town Hall, Zoning Department, 116 South Main Street, Norwood, North Carolina.
Send comments to The Honorable Larry McMahon, Mayor of the Town of Norwood, P.O. Box 697, Norwood, North Carolina 28128.

Town of Oakboro

Maps are available for inspection at Oakboro Town Hall, 109A North Main Street, Oakboro, North Carolina.
Send comments to The Honorable Joe Lowder, Mayor of the Town of Oakboro, P.O. Box 610, Oakboro, North Carolina 28129.

Town of Red Cross

Maps are available for inspection at Red Cross Town Clerk's Residence, 680 West Red Cross Road, Oakboro, North Carolina.
Send comments to The Honorable Ray Quick, Mayor of the Town of Red Cross, 231 East Red Cross Road, Oakboro, North Carolina 28129.

Town of Richfield

Maps are available for inspection at Richfield Town Hall, 138 Highway 49 North, Richfield, North Carolina.
Send comments to The Honorable Wade Barbee, Mayor of the Town of Richfield, P.O. Box 158, Richfield, North Carolina 28137.

Town of Stanfield

Maps are available for inspection at Stanfield Town Hall, 203 West Stanly Street, Stanfield, North Carolina.
Send comments to The Honorable Kevin Barbee, Mayor of the Town of Stanfield, P.O. Box 699, Stanfield, North Carolina 28163.

Unincorporated Areas of Stanly County

Maps are available for inspection at Stanly County Planning and Zoning Department, 1000 North First Street, Albemarle, North Carolina.
Send comments to Mr. Jerry Myers, Stanly County Manager, 1000 North First Street, Albemarle, North Carolina 28001.

Village of Misenheimer

Maps are available for inspection at Misenheimer Town Hall, 48384 U.S. Highway 52 North, Misenheimer, North Carolina.
Send comments to The Honorable Peter Edquist, Mayor of the Village of Misenheimer, P.O. Box 100, Misenheimer, North Carolina 28109.

Williamson County, Illinois, and Incorporated Areas

Campground Creek	Where Main Street crosses over Campground Creek.	None	+423	Unincorporated Areas of Williamson County.
	490 feet upstream of Main Street	None	+424	
	1090 feet upstream of Edgewood Park	None	+428	
	1160 feet upstream of Edgewood Park	None	+428	
Crab Orchard Creek	200 feet upstream of Fosse Road	None	+417	Unincorporated Areas of Williamson County.
	Just Downstream of State Highway 13	None	+430	
East Fork Campground Creek.	Where Main Street crosses East Fork Campground Creek.	None	+423	Unincorporated Areas of Williamson County 865 feet upstream of Belinda Road.
	865 feet upstream of Belinda Road	None	+426	
Lake Creek	Where Prosperity Road crosses Lake Creek	None	+402	Unincorporated Areas of Williamson County.
	650 feet upstream of Newton Avenue	None	+410	
West Fork Campground Creek.	Confluence with Campground Creek	None	+424	Unincorporated Areas of Williamson County.
	25 feet downstream of Honeysuckle Lane	None	+424	
West Fork Westernaire Creek.	Confluence with Westernaire Creek	None	+423	Unincorporated Areas of Williamson County.
	700 feet Downstream of Bainbridge Trail	None	+426	
Westernaire Creek	Where Main Street crosses over Westernaire Creek.	None	+421	Unincorporated Areas of Williamson County.
	750 feet upstream of DeYoung Street	None	+432	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Unincorporated Areas of Williamson County

Maps are available for inspection at Supervisor of Assessments Office, 200 West Jefferson, Marion, IL 62959.
Send comments to The Honorable Brent Gentry, County Board Chairman, Williamson County Courthouse, 200 West Jefferson, Marion, IL 62959.

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

Dated: August 21, 2007.

David I. Maurstad,

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

[FR Doc. E7–17346 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7732]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Mobile County, Alabama, and Incorporated Areas				
Branch B	Approximately 2,900 feet downstream of Golfway Street.	None	+87	City of Mobile, City of Prichard.
	Approximately 3,300 feet downstream of Golfway Street.	None	+172	
Branch C	Approximately 50 feet downsteam of U.S. 45	None	+42	City of Prichard.
	Approximately 1,200 feet upstream of West Meyers Road.	None	+91	
Branch D	Approximately 100 feet downstream of West Meyers Road.	None	+56	City of Prichard.
	Approximately 500 feet upstream Cochran Road	None	+117	
Branch D Tributary	Confluence with Branch D	None	+88	City of Prichard.
	Approximately 1,100 feet upstream of Confluence with Branch D.	None	+127	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Branch E	Approximately 2,100 feet above confluence with Eightmile Creek.	None	+18	City of Prichard.
	Approximately 1,800 feet upstream of Aldock Road ...	None	+35	
Branch F	Approximately 1,100 feet above confluence with Eightmile Creek.	None	+15	City of Prichard.
	Approximately 3,800 feet above confluence with Eightmile Creek.	None	+32	
Branch G	Approximately 800 feet downstream of West Main Street.	None	+28	City of Prichard.
	Approximately 250 feet upstream of Wolf Ridge Road	None	+44	
Gum Tree Branch	Approximately 100 feet upstream of Turner Road	None	+25	City of Prichard.
	Approximately 600 feet upstream of Caledonia Street	None	+29	
Miller Creek	Approximately 2,600 feet upstream of Snow Road	None	+153	Unincorporated Areas of Mobile County.
	Aproximately 12,420 feet upstream of Snow Road	None	+183	
Unnamed Branch	Approximately 100 feet downstream of Bear Fork Road.	None	+88	City of Prichard.
	Approximately 1,100 feet upstream of Forrest Park Road.	None	+149	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Mobile

Maps are available for inspection at 205 Government Street, 3rd Floor, Mobile, AL 36602.
Send comments to The Honorable Samuel L. Jones, Mayor, City of Mobile, P.O. Box 1827, Mobile, AL 36633.

City of Prichard

Maps are available for inspection at 216 East Prichard Avenue, Mobile, AL 36610.
Send comments to The Honorable Ron Davis, Mayor, City of Prichard, P.O. Box 10427, Prichard, AL 36610.

Unincorporated Areas of Mobile County

Maps are available for inspection at 1110 Schillinger Road, Suite 100, Mobile, AL 36608.
Send comments to The Honorable Stephen Nodine, Chairman, Mobile County, P.O. Box 1443, Mobile, AL 36633.

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

Dated: August 21, 2007.

David I. Maurstad,

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

[FR Doc. E7–17352 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–28140 Notice 1]

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: Based on the agency's evaluation, the NHTSA denies a petition for rulemaking from Ricon Corporation (Ricon) to amend S6.1/S7.4 (threshold warning signal requirement and related test procedure), S6.10.2.3 (anti-stow interlock requirement) and S6.10.2.7/S7.6 (occupied inner roll stop interlock requirement and related test procedure) of FMVSS No. 403. The NHTSA believes that the rulemaking is unnecessary because granting the proposed amendments would not result in a substantial increase in the effectiveness and safety benefit of the requirements and related test procedures. The NHTSA also believes that the current requirements and test procedures are appropriate and objective ways of ensuring compliance.

FOR FURTHER INFORMATION CONTACT:

For Non-Legal Issues: Contact Mr. William D. Evans, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–2272, Facsimile: (202) 366–7002.

For Legal Issues: Contact Mr. Ed Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background: On December 27, 2002 NHTSA published in the **Federal Register** a final rule, Federal Motor Vehicle Safety Standard (FMVSS) No. 403 (67 FR 79416), Platform Lift Systems for Motor Vehicles. The purpose of FMVSS No. 403 is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts installed in motor vehicles. The standard is written to protect standing passengers who may be aided by canes and walkers, as well as persons seated in wheelchairs, scooters and other mobility aids. FMVSS No. 403 became effective on April 1, 2005.

On October 1, 2004, in response to petitions for reconsideration of its December 27, 2002 final rule, the agency published a final rule in the **Federal Register** revising FMVSS Nos. 403 and 404. Among the changes made by the October 1, 2004 final rule, the agency amended the requirements for lighting on public use lifts, edge guard requirements and the wheelchair test device specifications (69 FR 58843).

Requirements in FMVSS No. 403 include S6.1/S7.4 (Threshold warning signal requirement and related test procedure), S6.10.2.3 (Anti-stow interlock requirement) and S6.10.2.7/S7.6 (Occupied inner roll stop interlock requirement and related test procedure) which are the subject of Ricon's petition for rulemaking.

Summary of Petition (S6.1/S7.4 Threshold Warning Signal Requirement and Related Test Procedure)

The first issue addressed is Ricon's request to alter the test procedures used to test the threshold warning signal requirement. According to the petitioner, the changes to the test procedure would better serve the intent of the regulation. Ricon states that the purpose of the threshold warning system is to provide an audible and visual warning signal when the lift platform is in an unsafe position for boarding and that the threshold warning signal is intended to alert passengers but does not physically restrain them. Ricon further states that the threshold warning requirements in FMVSS No. 403 are based on previous industry guidelines established by the California Department of Rehabilitation and the Society of Automotive Engineers (SAE) Standards J2092 and J2093. Ricon states that the California requirement was established as a result of accidents involving wheelchair-bound passengers backing out of the vehicle when the lift platform was not at vehicle floor level. Ricon notes that the threshold warning test in SAE J2092 emphasizes active verbs and phrases, which stress the dynamic nature of the test and make it clear that the recommendation's intent is to detect unsafe movement through the threshold area. It is Ricon's opinion that these tests contain an implied element of timeliness of the warning so that the threshold warning system can detect, activate, and warn with sufficient speed to protect the wheelchair passenger in the worst-case situation of a wheelchair moving through the threshold area. Therefore, Ricon requests that the FMVSS No. 403 test procedure for the threshold warning signal requirement be changed to a dynamic procedure to address this worst-case situation rather than consisting of the static multi-step test that presently appears in S7.4. Ricon also requests that the wheelchair test device include a simulated passenger (anthropomorphic dummy) which would have significant impact on how quickly the threshold warning signal reacts.

Analysis of Petition (S6.1/S7.4 Threshold Warning Signal Requirement and Related Test Procedure)

The petitioner suggests that the intent of the threshold warning system would best be served by using a dynamic, rather than static, test, in order to test the detection of unsafe movement. However, we note that while the concept of the threshold warning system can be attributed to both the California and SAE standards, the NHTSA chose not to adopt either of these requirements verbatim. The threshold warning signal requirements in FMVSS No. 403, S6.1 and its related test procedure in S7.4 are intended to warn standing passengers who may be aided by canes and walkers, as well as persons seated in wheelchairs, scooters and other mobility aids that are within the threshold warning area when the lift platform is greater than 25 mm (1 in) below the vehicle floor and the associated testing procedures serve those ends.

The current requirements and test procedure dictate that the warning signal must actuate if portions of a passenger and/or their mobility aid is already within the threshold area when the lift platform moves lower than 25 mm (1 in) below the vehicle floor and if the lift platform is already 25 mm (1 in) below the vehicle floor when a wheelchair rolls or a passenger steps onto any portion of the threshold warning area. In order to comply with these requirements, sensor coverage in the threshold warning area must be such that a warning signal is actuated when one front wheel of the wheelchair test device (WTD) is placed on any portion of the threshold warning area. The warning must remain continuously actuated until the wheel is removed from the threshold warning area or the platform is adjusted up to within 25 mm (1 in) of the vehicle floor level. One front wheel of the WTD is used because it exerts a downward force to trigger pressure sensitive mats and the WTD has structure to trigger light beam type systems. In addition, wheelchairs are the most common mobility aid used on platform lifts.

The matrix of sensors in a pressure sensitive mat must be such that it triggers off of the contact area between the WTD front wheel and the mat, and the matrix of light beams in a light beam type system must be such that the WTD structure continually obstructs at least one of the light beams while the WTD's front wheel is moved to all portions of the threshold warning area. Such systems will not allow a standing passenger or a passenger in a mobility aid to be partially or completely within the threshold area or roll/move within the threshold area when the platform is greater than 25 mm (1 in) below the vehicle floor without actuation of the threshold warning. Ricon's suggestion of a dynamic test has the practical effect of reducing the proximity sensing range to a single line under the assumption that the passenger will cross the line slowly after the platform has already been lowered. It may not warn a passenger already on the threshold when the platform is lowered subsequently.

The threshold warning requirements in FMVSS No. 403, as well as prior threshold warning standards do not protect fast-moving passengers moving through the threshold area. In order to do so, requirements would have to specify a maximum threshold warning reaction time, would most likely require a deeper threshold warning area and the degree of protection would still significantly depend on the reaction time of the passenger. However, comments to the supplemental notice of proposed rulemaking, the response to which was published in the final rule (67 FR 79416) included requests from Ricon, as well as others, to *reduce* the depth of the threshold warning area beyond its current 457 mm (18 in) depth due to limited space in the vehicle. FMVSS No. 403 currently maintains the 457 mm (18 in) depth requirement for the threshold warning area. However, with limited space in the vehicle for the existing threshold warning area, there is also limited space for a walking or wheelchair-bound passenger to build enough speed to move extremely fast through the threshold area. The current threshold warning area is of adequate size to warn passengers moving slowly through the threshold area and passengers stationary on any portion of the threshold area. The NHTSA believes that the current threshold warning signal requirements and test procedures in FMVSS No. 403 are appropriate and objective ways of ensuring compliance and protection to passengers in these situations. If there is no room in the vehicle to expand the threshold area, then improving protection for fast-moving passengers (if such situations exist) is not practical and the need to add or substitute a dynamic test is moot. Therefore, Ricon's petition to adopt a

dynamic test for the threshold warning signal is denied.

Regarding Ricon's request that the WTD include a simulated passenger (anthropomorphic dummy) which would have significant impact on how quickly the threshold warning signal reacts, the NHTSA does not agree that placing a load in the WTD will have a significant impact on the timeliness of threshold warning actuation relative to weight-based or light beam type systems. However, the NHTSA is already considering allowing a human representative of a 5th percentile female to be present in the WTD during the threshold warning signal test in FMVSS No. 403, S7.4. This consideration has no relationship to threshold warning signal response times but is related to a petition from Lift-U (Docket: NHTSA–2005–20286–30) concerning the use of infrared threshold warning detection. Information relative to this petition will be published in the near future in the form of a notice of proposed rulemaking (NPRM).

Summary of Petition (S6.10.2.3 Anti-Stow Interlock Requirement)

In its petition, Ricon recognizes that the purpose of the Anti-Stow Interlock is to prevent the accidental stowage of an occupied lift and that the anti-stow interlock requirement in FMVSS No. 403 was carried over from the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles (hereafter ''ADA'').[1] Ricon also agrees that the 50-pound weight used in FMVSS No. 403 is intended to simulate an unattended standing passenger. However, Ricon states that it disagrees with the FMVSS No. 403 version of the interlock requirement which states that the interlock must prevent stowing of the lift platform when the 50-pound weight is placed on ''*any portion*'' of the platform. Ricon believes that the interlock should only be tested with the 50-pound weight at the center of the lift platform instead of on ''*any portion*'' of the lift platform. Ricon cites the following reasons for its position:

- Under 49 CFR Part 38.23 Section (12), Use by Standees, it states that lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. *The platform may be marked to indicate a preferred standing position.*
- Ricon lifts have the standing position clearly marked on the lift platform. The standing position is also described in the operating instructions.
- Canadian Motor Vehicle standards place the test weight at the ''centroid'' position of the lift platform in its anti-stow interlock requirement.
- The required placement of the handrails required by FMVSS No. 403 dictate that the passenger stand in the approximate center of the platform.
- NHTSA's ''Final Regulatory Evaluation (FRE) and Regulatory Flexibility Analysis—Platform Lift'' does not include the anti-stow interlock in its discussion of hardware improvements necessary for existing lift designs to comply with FMVSS No. 403. Therefore, designs previous to the FRE must be acceptable. Such designs only trigger the interlock and prevent stowing of an occupied lift when the 50-pound weight is placed in the center of the platform.

Ricon claims that with respect to active lifts, it has met the anti-stow interlock requirement by incorporating a pressure control switch in the hydraulic circuit. The switch is designed to detect weight on the platform by reading pressure settings. In this case, pressure is a function of weight and the location of the weight on the platform. The further the weight is placed from the pivot center the higher the pressure reading. The Ricon system was designed to detect the 50-pound weight placed at the centroid (standee) position. Ricon said that based on its industry experience and observation of competitor's products, this same design feature is used on the vast majority of ''active'' platform lifts in service prior to FMVSS No. 403, and remains in service today. Further, Ricon believes that this is the design feature that the NHTSA reviewed prior to concluding that there was no additional cost of compliance to meet this requirement. However, by the NHTSA requiring the interlock to function when the test weight is on ''*any position*'' rather than simply on the ''centroid or standee'' position, significant design changes, as well as additional costs, which were not anticipated are required. Ricon believes that the choice of language to include ''*any position*'' on the platform is inconsistent with prior industry practice as well as NHTSA's own intent which resulted in unintended consequences not foreseen by the regulation. As such, Ricon is requesting that the language in S6.10.2.3 be changed to specify placement of the 50-pound weight at the ''centroid or standee'' position.

Analysis of Petition (S6.10.2.3 Anti-Stow Interlock Requirement)

Under ADA, Subpart A, 38.23 *Mobility aid accessibility*, (b) *Vehicle lift*, (12) *Use by standees* it states that ''lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform *may* be marked to indicate a preferred standing position.'' The ADA also states under Subpart A, 38.23 *Mobility aid accessibility*, (b) *Vehicle lift,* (2) *Controls* that the control shall not allow an occupied platform to fold or retract into the stowed position. The ADA does not specifically link ''a preferred standing position'' in the ''*Use by* standees'' section to the anti-stow interlock requirement under the ''*Controls*'' section. Also, the ADA contains no test procedure. It was for this reason that the Architectural and Transportation Barriers Compliance Board charged the NHTSA with the responsibility of developing safety tests for platform lifts. The NHTSA follows ADA's premise that the anti-stow interlock should protect standing passengers, as well as persons in mobility aids. Not all lift manufacturers designate a standing position on its platform and standing passengers have the option of standing on any useable portion of the platform even if a standing position is designated. It is for these reasons that the NHTSA chose to test the anti-stow interlock on any useable portion of the platform. The anti-stow interlock requirements in FMVSS No. 403, S6.10.2.3 not only protects heavy loads such as a passenger in a wheelchair completely on the lift platform, but it also protects lighter loads such as a small child standing on any useable portion of the platform, as well as passengers in wheelchairs that may be partially on the lift platform and partially on the vehicle floor.

Ricon commented in its petition that the FRE did not include the anti-stow interlock in its discussion of hardware improvements necessary for existing lift designs to comply with FMVSS No. 403, and therefore NHTSA did not really intend the anti-stow interlock to protect passengers on any useable portion of the platform. The FRE talks in general terms and does not necessarily address the specifics of each and every individual lift model. It is NHTSA's intention that the anti-stow interlock protect all passengers whether standing or seated in mobility aids on any useable portion of the platform. This concept is feasible as proven by manufacturers that have interpreted and complied with the requirements correctly. Therefore, NHTSA is not persuaded to amend the interlock requirement in accordance with Ricon's petition.

[1] *See* 49 CFR Part 38.

Summary of Petition (S6.10.2.7/S7.6 Occupied Inner Roll Stop Interlock Requirement and Related Test Procedure)

Ricon, in its petition, recognizes that the occupied inner roll stop interlock in FMVSS No. 403 is intended to detect the presence of a passenger (either in a wheelchair or a standee) on the inner roll stop and prevent the inner roll stop from deploying when it is occupied. Ricon further mentions that the test procedure in S7.6 uses the front wheel of the WTD to simulate an occupied inner roll stop. Ricon indicates that there is significant latitude about the number of front wheels to be placed on the inner roll stop (either one or two front wheels), as well as where the front wheels are placed. Ricon believes that the degree of latitude is ambiguous and may cause test results that are not objective and repeatable. Ricon recommends changing S7.6 by substituting a 25-pound test weight for the WTD. Ricon said that a 25-pound test weight will exert the same force as the weight of one front wheel of an unoccupied WTD and at the same time would provide worst-case protection for standing passengers. Ricon further explained that for test purposes, it recommends placement of the entire 25-pound weight on any portion of the inner barrier. By this Ricon means that the weight should not be placed half on and half off the inner barrier. Ricon says that such an amendment to FMVSS No. 403 would allow for easy verification of the interlock outside of a laboratory environment which is important as it will eliminate the myriad of *ad hoc* tests that inspectors currently use when a wheelchair test device is not readily available. Ricon indicated that the proposed change will make the test procedure more objective and repeatable.

Analysis of Petition (S6.10.2.7/S7.6 Occupied Inner Roll Stop Interlock Requirement and Related Test Procedure)

The test procedure in FMVSS No. 403, S7.6 is a single test procedure that verifies both the interlock requirements in S6.10.2.4 and S6.10.2.7. The interlock in S6.10.2.4 is one that prevents further up or down movement of the platform if the inner roll stop fails to deploy at the point where it is designed to deploy. The interlock in S6.10.2.7 is one that prevents the inner roll stop from deploying when occupied. Therefore, if the platform is moving down from the vehicle floor level and a wheel of the WTD is on the inner roll stop, when the platform gets to the level where the inner roll stop is designed to deploy, the inner roll stop should not deploy and the platform should stop. This means that the S6.10.2.7 interlock sensed that the inner roll stop was occupied and did not deploy and the S6.10.2.4 interlock sensed that the inner roll stop did not deploy at the point it is designed to deploy and caused the platform to stop. Also, when the S6.10.2.7 interlock is activated and inhibiting deployment of the inner roll stop, it must not allow the inner roll stop to lift the wheel of the WTD vertically off the platform more than 13 mm (0.5 in).

The test procedure instructs one to move the lift platform to the vehicle floor level and place the WTD on the lift platform facing toward the vehicle. The platform is moved down until the inner roll stop deploys and this location is noted. The platform is then moved back up to the vehicle floor level loading position. One front wheel of the WTD is placed on any portion of the inner roll stop. If the platform is too narrow to maneuver one front wheel of the WTD on any portion of the inner roll stop, two front wheels may be placed on any portion of the inner roll stop. Using the lift control move the platform down until it stops. The platform must not be at a lower level than the previously noted level where the inner roll stop is designed to deploy and the wheel or wheels of the WTD must not have raised vertically more than 13 mm (0.5 in).

The NHTSA has not received any specific complaints relative to implementation or repeatability problems with the test procedure. The NHTSA chose the front wheel of the WTD to load the inner roll stop as it is probably the most common item that may be inadvertently on and restricting the deployment of the inner roll stop under real-world conditions. The NHTSA does not stipulate how the wheelchair test device's wheel is placed on the inner roll stop. It is permissible for the wheel to be completely on the inner roll stop so the full downward force exerted by the wheel is transferred to the inner roll stop. If S7.6 were amended to use a 25-pound test weight, then other tests that use the front wheel of the WTD would have to be amended for the sake of consistency. Therefore, the NHTSA is not in favor of changing the load to a test weight unless specific problems with detailed information and data are brought to our attention. As the NHTSA's regulations require self-certification, it is not prohibited that manufacturers and inspectors test with a 25-pound test weight as long as they determine that it will correctly indicate compliance of their particular lift design when the weight is placed on *any* portion of the inner roll stop. The NHTSA, however, will continue to conduct compliance tests using the front wheel of the WTD in accordance with S7.6. Therefore, the NHTSA, at this time, denies Ricon's petition to amend S7.6 to use a 25-pound test weight in place of the front wheel of the WTD.

Conclusion

In accordance with 49 CFR Part 552, this completes the agency's review of the petition for rulemaking. The NHTSA believes that the suggested amendments would not result in a substantial increase in the effectiveness and safety benefit of the requirements and related test procedures. The NHTSA also believes that the current requirements and test procedures are appropriate and objective ways of ensuring compliance. Thus, after considering the allocation of agency resources and agency priorities, NHTSA has decided that the rulemaking requested by the petitioner is not warranted. Accordingly rulemaking on the petition is denied.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: August 27, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–17374 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 72, No. 169
Friday, August 31, 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

Forest Service

Notice of Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393, as amended by Section 5401 of Public Law 110–28, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Tuesday, September 18, 2007, from 4 p.m. to 8 p.m., in Philipsburg, Montana, for a business meeting. The meeting is open to the public.

DATES: Tuesday, September 18, 2007.

ADDRESSES: The meeting will be held at the Forest Service office at 88 Business Loop, Philipsburg, Montana.

FOR FURTHER INFORMATION CONTACT: Bruce Ramsey, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include a review of projects proposed for funding as authorized under Title II of Public Law 106–393, and public comment. If the meeting location is changed, notice will be posted in local newspapers, including The Montana Standard.

Dated: August 24, 2007.

Bruce Ramsey,

Designated Federal Official, Forest Supervisor.

[FR Doc. 07–4271 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on September 17 and 18, 2007. The purpose is to meet as a Committee to review proposed projects for fiscal year 2008.

DATES: The meeting will be held as follows: September 17, 8 a.m. to 5 p.m. in John Day, Oregon. September 18, 8 a.m. to noon.

ADDRESSES: The September, 2007 meeting will be held at the Malheur National Forest Supervisor's Office, 431 Patterson Bridge Rd., John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, P.O. Box 909, John Day, Oregon 97845. Phone: (541) 575–3008.

SUPPLEMENTARY INFORMATION: A public comment period will be provided at 12:30 p.m. on September 17 and individuals will have the opportunity to address the committee at that time. The September 18 meeting will only occur if needed to finish the business of the committee.

Dated: August 27, 2007.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. E7–17303 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–DK–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agriculture Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of Meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene at 8 a.m. on Wednesday, October 3, 2007, through 12 p.m. on Friday, October 5, 2007. A public comment period will be held on October 4, 2007. Individuals making oral presentations should register in person at the meeting site and must bring with them 50 copies of materials they would like distributed. Written materials for AAQTF's consideration prior to the meeting must be received by Michele Laur (address given below) no later than Monday, September 10, 2007.

ADDRESSES: The meeting will be held at the Sheraton Indianapolis City Centre Hotel, 31 West Ohio Street, Indianapolis, Indiana 46204; telephone: (317) 635–2000.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Michele Laur, Designated Federal Officer. Ms. Laur may be contacted at USDA Natural Resources Conservation Service, Post Office Box 2890, Room 6165–South, Washington, DC 20013; telephone: (202) 720–1858; e-mail: *Michele.Laur@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF may be obtained on the Internet at *http://www.airquality.nrcs.usda.gov/AAQTF/*.

Draft Agenda of the October 3–5, 2007, Meeting of AAQTF*

Wednesday, October 3, Beginning at 8 a.m.

A. Welcome to Indianapolis, Indiana.
B. Discussion of Subcommittee Action Plans and Activities.
C. Discussion of Environmental Issues.

Thursday, October 4 and Friday, October 5

D. Discussion of Subcommittee Action Plans and Activities.
E. Discussion of Indiana Air Quality Issues.
F. Discussion of Ozone.
G. Discussion of Climate Change.
H. Next Meeting, Time and Place.
I. Public Comments.
(Time will be reserved on October 4, 2007, to receive public comment. Individual presentations will be limited to 5 minutes).

*Please note that the timing of events in the agenda is subject to change to

accommodate changing schedules of expected speakers.

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 50 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be received by Ms. Laur no later than Monday, September 10, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Ms. Laur. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Dated: Signed in Washington, DC on August 23, 2007.

Arlen L. Lancaster,

Chief.

[FR Doc. 07–4265 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Section 538 Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2007

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) is correcting a notice published June 11, 2007 (72 FR 32070–32071). This action is taken to extend the application obligation date from August 31, 2007 to September 28, 2007. This correction is to ensure that all applications that meet program criteria and have responded accordingly, will be considered in the Demonstration Program.

Accordingly, the Notice published on June 11, 2007 (72 FR 32070–32071), is corrected as follows:

On page 32071, in the first column, second paragraph, under the heading ''Demonstration Program Selection Process,'' the second sentence is corrected to read as follows: ''In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program set-aside funds of approximately $10 million, then the selection process for any remaining funds will be conducted on September 28, 2007, and will include all applications obligated from October 1, 2006 to September 28, 2007.'' All applicants will be notified of the selection results no later than 15 business days from the date of selection.

Dated: August 24, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E7–17219 Filed 8–30–07; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: September 30, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service 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 service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

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 service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service:

Service Type/Location: Custodial Services, Roanoke Regional Airport, Transportation Security Administration , (Break-room, hallway, office and private restroom), 5202 Aviation Drive, NW., Roanoke, VA.

NPA: Goodwill Industries of the Valleys, Inc., Roanoke, VA.

Contracting Activity: General Services Administration, Region 3, Philadelphia, PA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–17321 Filed 8–30–07; 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 and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 30, 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 June 22, July 6 and July 13, 2007 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 34433–34434; 36951; 38561) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services 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 and services to the Government.

2. 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.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

GOJO/Skilcraft
NSN: 8520–00–NIB–0084—GOJO/Skilcraft 1250 ml Foam Soap Dispensers, BX 6
NSN: 8520–00–NIB–0086—GOJO/Skilcraft 1250 ml Green Seal Foam Handwash Refill
NSN: 8520–00–NIB–0088—GOJO/Skilcraft 1250 ml Foam Handwash Refill
NSN: 8520–00–NIB–0100—GOJO/Skilcraft 1250 ml Foam Soap Dispenser Kit
Coverage: A-List—100% for the total Government requirement as specified by the General Services Administration

Purell/Skilcraft
NSN: 8520–00–NIB–0099—Purell/Skilcraft 1200 ml Instant Hand Wash Sanitizer Refill
NSN: 8520–00–NIB–0101—Purell/Skilcraft 1250 ml Foam Soap Dispenser
NSN: 8520–00–NIB–0102—Purell/Skilcraft 1250 ml Foam Soap Dispensers, BX 6
Coverage: A-List—100% for the total Government requirement as specified by the General Services Administration
NPA: Travis Association for the Blind, Austin, TX
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX

Shredder Bag
NSN: 8105–00–NIB–1263—44″ × 39″ (pk of 50)
NSN: 8105–00–NIB–1264—24″ × 26″ (pk of 100)
NSN: 8105–00–NIB–1265—29″ × 30″ (pk of 100)
NSN: 8105–00–NIB–1266—31″ × 36″ (pk of 50)
NSN: 8105–00–NIB–1267—39″ × 51″ (pk of 50)
NSN: 8105–00–NIB–1268—36″ × 39″ (pk of 50)
NSN: 8105–00–NIB–1269—49″ × 51″ (pk of 50)
Coverage: A-List—for the total Government requirements as specified by the General Services Administration.
NPA: Envision, Inc., Wichita, KS
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

Services

Service Type/Location: Custodial Services, U.S. Border Patrol, ADP Branch—Blaine Sector Training, 1573 H Street, Blaine, WA.

Service Type/Location: Custodial Services, U.S. Border Patrol, Bellingham Station, 2745 McLeod Road, Bellingham, WA.

Service Type/Location: Custodial Services, U.S. Border Patrol, Blaine Sector Headquarters, 2410 Nature's Path Way, Blaine, WA.

Service Type/Location: Custodial Services, U.S. Border Patrol, Lynden Station, 8334 Guide Meridian, Bellingham, WA.
NPA: Lake Whatcom Residential and Treatment Center, Bellingham, WA.
Contracting Activity: Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Laguna Niguel, CA.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 10 Metrotech Center, Brooklyn, NY.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 290 Broadway, Foley Square, New York, NY.
NPA: Fedcap Rehabilitation Services, Inc., New York, NY.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 1000 Liberty Ave, Pittsburgh, PA.
NPA: Blind and Vision Rehabilitation Services of Pittsburgh, Pittsburgh, PA.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 107 Charles Lindberg Blvd., Garden City, NY.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 110 West 44th Street (Midtown), New York, NY.
NPA: The Corporate Source, Inc., New York, NY.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 51 SW First Avenue, Miami, FL.
NPA: Abilities, Inc. of Florida, Clearwater, FL.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 110 City Parkway, Las Vegas, NV.
NPA: Blind Center of Nevada, Inc., Las Vegas, NV.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 1240 East Ninth Street, Cleveland, OH.
NPA: VGS, Inc., Cleveland, OH.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 2001 Butterfield Road, Downers Gove, IL.
NPA: Jewish Vocational Service and Employment Center, Chicago, IL.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 225 West Broadway, Glendale, CA.
NPA: Pacific Coast Community Services, Richmond, CA.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 2888 Woodcock Blvd, Atlanta, GA.
NPA: Bobby Dodd Institute, Inc., Atlanta, GA.

Service Type/Location: Mailroom Operations, Internal Revenue Service Mailroom, 9350 East Flair Drive, El Monte, CA.
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA.
NPA: ServiceSource, Inc., Alexandria, VA (PRIME CONTRACTOR),
Contracting Activity: U.S. Department of Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–17322 Filed 8–30–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Clarification of Scope of Procurement List Additions; 2007 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of October 1, 2007.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535–69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between June 1, 2007 and August 31, 2007. If not currently available, the products listed below as being included on the A-list will be available for purchase through the GSA Global Supply system and JWOD-authorized commercial distributors on or about October 1, 2007.

DATES: The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is October 1, 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: Emily A. Covey, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *cmtefedreg@jwod.gov.*

Products moved from B-list to A-list: None.

Products moved from C-list to A-list:

Bag, Trash, Coreless Roll
8105–00–NIB–1240
8105–00–NIB–1241
8105–00–NIB–1242
8105–00–NIB–1243

Products moved from A-list to B-list None.

Products moved from A-list to C-list: None.

Products moved from B-list to C-list: None.

Products moved from C-list to B-list: None.

The complete A-list is available at *http://www.jwod.gov/jwod/p_and_s/alist2007.htm.*

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–17323 Filed 8–30–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1523

Approval of Manufacturing Authority, Within Foreign–Trade Zone 222, Montgomery, Alabama, ArvinMeritor, Inc. (Automotive Door Modules)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)(the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Montgomery Area Chamber of Commerce, grantee of FTZ 222, has requested authority under Section 400.32(b)(1) of the Board's regulations on behalf of ArvinMeritor, Inc., to manufacture automotive door modules under FTZ procedures within FTZ 222 Site 1, Montgomery, Alabama (FTZ Docket 46–2006, filed 12–5–2006);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 75228, 12–14–2006);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (§ 400.32(b)(1)(i); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of Section 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to Section 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of August 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17366 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1521]

Application for Subzone Status Not Approved

Sharp Electronics Corporation, Huntington Beach, California

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, has made application to the Board for authority to establish special–purpose subzone status at the office and consumer electronics/home products/solar panels warehousing and distribution facility of Sharp Electronics Corporation, located in Huntington Beach, California (FTZ Docket 8–2006, filed 02–27–06);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 12676, 3/13/2006); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations have not been

satisfied because the applicant did not provide information requested by the Board;

Now, therefore, the Board hereby does not approve the application for subzone status at the office and consumer electronics/home products/solar panels warehousing and distribution facility of Sharp Electronics Corporation, located in Huntington Beach, California.

Signed at Washington, DC, this 23rd day of August 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17328 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 42–2007

Foreign–Trade Zone 107 - Des Moines, Iowa, Application for Subzone Status, SPAL USA, Inc., (Vehicle Parts Distribution and Processing), Ankeny, Iowa

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Iowa Foreign–Trade Zone Corporation, grantee of FTZ 107, requesting special–purpose subzone status for the vehicle parts distribution and processing (kitting) facility of SPAL USA, Inc. (SPAL), located in Ankeny, Iowa. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 23, 2007.

The SPAL facility (28 employees, 5.5 acres) is located at 1731 SE Oralabor Road (1 building, 5.5 acres, 36,000 sq. ft.) in Ankeny, Iowa. The facility is used for the warehousing, distribution, repair and possible processing (i.e., kitting) of foreign–origin and domestic vehicle parts and equipment for the U.S. market and export. FTZ procedures would be utilized to support SPAL's Iowa–based distribution activity that competes with facilities located abroad.

Finished vehicle parts to be admitted to the proposed subzone for distribution and processing would include circuit connectors, motorized linear actuators, motor assemblies, door cutters, power door lock kits/window kits, radio remote control apparatus, switches/switch kits and accessories, screws, wire, trade advertising material, control valve pressure sensors, and automotive fans and blowers (duty rates range: duty–free to 6.2%).

SPAL could also conduct certain kitting operations under FTZ procedures in the future (e.g., combine foreign–origin fans and blowers with a domestic harness and combine foreign circuit connectors with a domestic harness). Kitting would be limited to foreign components included in the list of finished vehicle parts in the preceding paragraph.

FTZ procedures would exempt SPAL from Customs duty payments on foreign products that are re–exported. Some ten percent of the plant's shipments are exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the facility and entered for U.S. consumption. For its processing activity, SPAL would be able to elect the duty rate that applies to finished products for the foreign–sourced inputs noted above. SPAL also plans to realize logistical benefits through the use of weekly entry procedures. The application indicates that all of the above–cited savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 30, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 14, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 210 Walnut Street, Suite 749, Des Moines, Iowa 50309; and, the Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Kathleen Boyce at (202) 482–1346 or *Kathleen__Boyce@ita.doc.gov*.

Dated: August 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17333 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 41–2007

Foreign–Trade Zone 161 - Wichita, Kansas, Expansion of Subzone and Scope of Manufacturing Authority, Subzone 161A, Hospira, Inc. (Pharmaceutical Products), McPherson, Kansas

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Board of County Commissioners of Sedgwick, Kansas, grantee of FTZ 161, requesting to expand the subzone and scope of manufacturing authority under zone procedures for Subzone 161A, at the Hospira, Inc. (Hospira) facility in McPherson, Kansas. It was formally filed on August 23, 2007.

Subzone 161A was approved by the Board in 1994 at Hospira's plant (2 buildings totaling 265,000 square feet, 72% of which is devoted to manufacturing, on 160 acres) located at 1776 North Centennial Drive, in McPherson, Kansas. The facility (775 employees) is used to produce and/or distribute a wide range of pharmaceuticals (Board Order 699, 59 FR 38431, 7/20/94).

Hospira is now requesting authority to expand the subzone to include an additional 301,310 square feet at the main building, located at 1776 North Centennial Drive in McPherson, Kansas, for the distribution and manufacture of pharmaceutical products. The applicant is also requesting authority to add rubber stoppers (HTSUS 4016.99.1500) to its scope of manufacturing authority. Hospira's scope also includes a broad range of inputs and pharmaceutical final products that it may produce under FTZ procedures in the future. (New major activity in these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty–free to 17.6 percent.

Zone procedures would exempt Hospira from Customs duty payments on foreign materials used in production for export (some 10–15% of shipments). On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products (duty–free to 5%)

instead of the rates otherwise applicable to the foreign input materials (duty–free to 17.6%). McPherson also expects to realize additional savings through the use of weekly entry procedures. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 30, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 14, 2007.)

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 150 N. Main Street, Suite 200, Wichita, Kansas 67202–1305 and the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Kathleen Boyce at 202–482–1346 or *Kathleen__Boyce@ita.doc.gov*.

Dated: August 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17331 Filed 8–30;–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1522

Reorganization of Foreign–Trade Zone 181–Site 2, Trumbull and Mahoning Counties, Ohio

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Northeast Ohio Trade & Economic Consortium, grantee of Foreign–Trade Zone No. 181, submitted an application to the Board for authority to reorganize FTZ 181–Site 2, in Trumbull and Mahoning Counties, Ohio, within the Cleveland Customs and Border Protection (CBP) port of entry (FTZ Docket 2–2007, filed 1/22/2007);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 6200, 2/9/2007) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 181 - Site 2 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall general–purpose zone project, and a sunset provision that would terminate authority on December 31, 2012 for any of the additional parcels at Site 2, where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 23rd day of August 2007.

David M Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17364 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1520]

Designation Of New Grantee For Foreign–Trade Zone 147, Reading, Pennsylvania Area Resolution And Order

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign–Trade Zones Board Regulations (15 CFR Part 400), the Foreign–Trade Zones Board (the Board) adopts the following Order:

The Foreign–Trade Zones (FTZ) Board (the Board) has considered the application (filed 12/15/2006) submitted by the Foreign Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, Reading, Berks County, Pennsylvania, requesting reissuance of the grant of authority for said zone to the FTZ Corp of Southern Pennsylvania, a non–profit organization, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the FTZ Corp of Southern Pennsylvania as the new grantee of Foreign Trade Zone 147, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of August 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17347 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 12, 2007, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Welcome and Introductions.
2. Working Group Reports.
3. Presentations by the Public.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at

Yspringer@bis.doc.gov no later than September 4, 2007.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 2, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of any agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 21, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–4281 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC16

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of research permits.

SUMMARY: Permits1564, 1565, 1566, and 1567 were issued on November 29, 2006; all other permits in this notice were issued on June 30, 2007. All the research actions and the species they affect are listed in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The permits, permit applications, and related documents are available for review during business hours by appointment at NMFS' Protected Resources Division, F/NWO3, 1201 NE., Lloyd Blvd., Suite 1100, Portland, OR. 97232–1274 (ph: 503–230–5400, fax: 503–230–5441).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (phone: 503–231–2005, fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov).*

SUPPLEMENTARY INFORMATION:

Authority

The Endangered Species Act of 1973 (ESA) requires that permits and modifications be issued based on findings that such actions: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species that are the subject of the actions; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with, and are subject to, the ESA and NMFS' regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The ESA-listed species/evolutionarily significant units (ESUs)/distinct population segments (DPSs) covered by this notice are identified below and listed in the subsequent table by the numbers that precede each of them in the following text:

(1) Threatened Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*)

(2) Threatened Lower Columbia River (LCR) Chinook salmon (*O. tshawytscha*)

(3) Threatened Snake River (SR) spring/summer Chinook salmon (*O. tshawytscha*)

(4) Threatened SR fall Chinook salmon (*O. tshawytscha*)

(5) Endangered Upper Columbia River (UCR) spring-run Chinook salmon (*O. tshawytscha*)

(6) Threatened Upper Willamette River (UWR) Chinook salmon (*O. tshawytscha*)

(7) Threatened Hood Canal summer-run chum salmon (*O. keta*)

(8) Threatened Columbia River chum salmon (*O. keta*)

(9) Threatened LCR steelhead (*O. mykiss*)

(10) Threatened Middle Columbia River steelhead (*O. mykiss*)

(11) Threatened SR steelhead (*O. mykiss*)

(12) Threatened UWR steelhead (*O. mykiss*)

(13) Endangered UCR steelhead (*O. mykiss*)

(14) Threatened PS steelhead (*O. mykiss*)

(15) Endangered SR sockeye salmon (*O. nerka*)

(16) Threatened Ozette lake sockeye salmon (*O. nerka*)

(17) Threatened LCR coho salmon (*O. kisutch*)

(18) Threatened Southern Oregon-Northern California Coasts coho salmon (*O. kisutch*)

TABLE 1. SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING LISTED PACIFIC SALMONIDS

Permit Number	Affected Species/ESUs	Permittee	FEDERAL REGISTER Notice of Application Receipt
1135	9	The United States Geological Survey (USGS)	71 FR 44615 (August 7, 2006)
1175	1, 2, 9, 14,17	The Gifford Pinchot national Forest	71 FR 65474 (November 8, 2006)
1290	2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 17	The Northwest Fisheries Science Center (NWFSC)	71 FR 44615 (August 7, 2006)
1313	1, 14	Pentec Environmental	71 FR 65474 (November 8, 2006)
1318	2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 17	Oregon Department of Fish and Wildlife (ODFW)	71 FR 44615 (August 7, 2006)

TABLE 1. SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING LISTED PACIFIC SALMONIDS—Continued

Permit Number	Affected Species/ESUs	Permittee	FEDERAL REGISTER Notice of Application Receipt
1322	2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 17	NWFSC	71 FR 44615 (August 7, 2006)
1330	2, 9, 17	Weyerhauser Corporation	71 FR 44615 (August 7, 2006)
333	6, 12	Oregon State University	71 FR 44615 (August 7, 2006)
1335	1, 2, 5, 6, 7, 8, 9, 10, 12, 13, 14, 17, 18	The United States Forest Service	71 FR 27710 (May 12, 2006)
1339	3, 11	The Columbia River Inter-Tribal Fish Commission (CRITFC)	72 FR 7769 (February 20, 2007)
1341	3, 15	The Shoshone-Bannock Tribes	72 FR 28683 (May 22, 2007)
1345	1, 3, 5, 10, 11, 13, 14	The Washington Department of Fish and Wildlife (WDFW)	72 FR 28683 (May 22, 2007)
1365	10	The Confederated Tribes of the Umatilla Indian Reservation	72 FR 28683 (May 22, 2007)
1372	1, 14	Puget Sound Energy Corporation	71 FR 65474 (November 8, 2006)
1379	2, 3, 4, 5, 9, 10, 11, 13, 15, 17	CRITFC	72 FR 7769 (February 20, 2007)
1386	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 16, 17	The Washington Department of Ecology	71 FR 65474 (November 8, 2006)
1423	5, 13	The United States Fish and Wildlife Service	72 FR 28683 (May 22, 2007)
1461	2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 12, 17	USGS	71 FR 44615 (August 7, 2006)
1521	1, 2, 8, 9, 17	Wyllie-Echeverria Associates	71 FR 65474 (November 8, 2006)
1564	1	The University of Washington	71 FR 27710 (May 12, 2006)
1565	1, 2, 9, 17	The U.S. National Park Service	71 FR 27710 (May 12, 2006)
1566	1	NWFSC	71 FR 27710 (May 12, 2006)
567	1	Ridolfi, Inc.	71 FR 27710 (May 12, 2006)
1568	1, 14	NWFSC	71 FR 27710 (May 12, 2006)
1585	1, 7, 14	The Washington Department of Natural Resources	71 FR 65474 (November 8, 2006)
1586	1, 14	NWFSC	71 FR 65474 (November 8, 2006)
1587	1, 14	USGS	71 FR 65474 (November 8, 2006)
1588	1, 14	USGS	71 FR 65474 (November 8, 2006)
1590	1, 14	The U.S. Army Corps of Engineers	72 FR 7769 (February 20, 2007)
1598	1, 3, 4, 5, 7, 10, 11, 13,14, 15, 16	The Washington Department of Transportation	72 FR 7769 (February 20, 2007)
1611	10	Confederated Tribes of Warm Springs Reservation, Oregon	72 FR 28683 (May 22, 2007)
1612	5, 13	Washington Trout	72 FR 28683 (May 22, 2007)

Dated: August 24, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17350 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC10

Western Pacific Pelagic Fisheries, Hawaii-based Longline Swordfish Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: The Western Pacific Fishery Management Council (WPFMC) and NMFS have announced their intent to prepare a Supplemental Environmental Impact Statement (SEIS) on the Federal management of the Hawaii-based shallow-set pelagic longline fishery in the western Pacific. This notice corrects the location of an additional opportunity for public involvement.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, WPFMC, (808) 522–8220, or William L. Robinson, Regional Administrator, NMFS, (808) 944–2200.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on August 21, 2007 (72 FR 46608), in the **SUPPLEMENTARY INFORMATION** section, Under the heading ''Public Involvement,'' the location of the 139th WPFMC meeting on October 9–12, 2007, was incorrect. The correct location is the Pagoda Hotel, 1525 Rycroft St., Honolulu, HI 96814.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17349 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB92

Fisheries of the Southeast Region; Overfishing Determination of South Atlantic Vermilion Snapper and South Atlantic Gag; Determination of South Atlantic Gag Approaching an Overfished Condition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of determination of overfishing and approaching an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that South Atlantic gag is undergoing overfishing and is approaching an overfished condition and that South Atlantic vermilion snapper is also experiencing overfishing. NMFS notified the South Atlantic Fishery Management Council (Council) of its determination by letter. The Council is required to take action within 1 year following notification by NMFS that overfishing is occurring, a stock is approaching overfishing, a stock is overfished, a stock is approaching an overfished condition, or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS sends written notification to fishery management councils when overfishing is occurring, a stock is approaching overfishing, a stock is overfished, a stock is approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. On June 12, 2007, the NMFS Southeast Regional Administrator sent a letter notifying the Council that South Atlantic gag is undergoing overfishing and approaching an overfished condition and that South Atlantic vermilion snapper is also experiencing overfishing.

A copy of the notification letter sent to the Council for the aforementioned determination is available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm*.

Within 1 year of a notification under Magnuson-Stevens Act sections 304(e)(2) or (e)(7), the respective Council must take remedial action in response to the notification, to end overfishing if overfishing is occurring; rebuild an overfished stock or stock complex to the abundance that can produce maximum sustainable yield within an appropriate time frame; prevent overfishing from occurring if a stock is approaching overfishing; and/or prevent a stock from becoming overfished if it is approaching an overfished condition (see implementing regulations at 50 CFR 600.310(e)(3)). Such action must be submitted to NMFS within 1 year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations.

Dated: August 27, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17335 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081403A]

Marine Mammals; File No. 782–1708

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, 7600 Sand Point Way NE, Bldg. 4, Seattle, WA 98115–0070 (Principal Investigator: Dr. John Bengtson), has requested a major amendment to scientific research Permit No. 782–1708.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 1, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources,

NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 782–1708.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 782–1708 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 782–1708 , issued on August 28, 2003 (68 FR 53967), authorizes the permit holder to capture and harass northern fur seals (*Callorhinus ursinus*) of the eastern Pacific stock in Alaska during scientific research for: monitoring the status and trends of the population; evaluating the condition of animals from each cohort (health and strength of year-class); monitoring the seals' diet; and documenting the movement patterns, foraging behavior, and essential foraging habitat of various age and sex classes of fur seals. Seals may be captured, tagged, sampled and harassed during annual censuses. The information collected under this permit is related to assessing the recovery of this depleted species and for evaluating management actions. The permit holder now requests authorization to perform additional sampling procedures on animals already authorized for capture. The proposed amendment would not result in an increase in the number of northern fur seals captured and sampled, but would add the following procedures related to a vital rate study or identification of location of prey consumption events: flipper tagging all pups captured; extraction of a single tooth, under anesthesia, from all non-pups captured; and use of a stomach temperature telemeter/recorder on non-pups captured.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit amendment would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 27, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17320 Filed 8–30–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Liquid Immersed Pumped Solid State Laser

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent No. 6,760,351 entitled ''Liquid Immersed Pumped Solid State Laser,'' issues on July 6, 2004. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Office of Research and Technology Applications, SDMC–RDTC–TDL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil,* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil;* (256) 955–1501.

SUPPLEMENTARY INFORMATION: The invention pertains to temperature control of solid state lasers. A liquid immersed pumped solid state lasing system includes a light source and a lasing element spaced from the light source. The light source and the lasing element are mounted in an insulated container. The top of the container is open for inputting a clear cryogenic cooling liquid into the container to totally immerse the light source and the lasing element in the liquid. Heat transfer occurs by conduction from the light source and the lasing element to the liquid, thereby cooling the light source and the lasing element to cryogenic temperatures. The container has a window for the output of laser light. A plurality of electrical leads that are superconducting at cryogenic temperatures are attached to the light source. When the leads are connected to a power supply outside the container, the light source directs light on the lasing element so that the lasing element is excited and transmits a light output through the window.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4275 Filed 8–30–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Radar Beam Steering With Remote Reflectory/Refraction

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent No. 6,914,554 entitled ''Radar Beam Steering with Remote Reflectory/Refraction,'' issued on July 5, 2005. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Office of Research and Technology Applications, SDMC–RDTC–TDL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil,* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil;* (256) 955–1501.

SUPPLEMENTARY INFORMATION: The invention pertains to detecting reflected energy and, more particularly, to radar and ladar systems with enhanced range. A reflected energy detecting device includes a transmitter for transmitting an electromagnetic signal and a receiver for receiving a reflected electromagnetic signal. An antenna connected with the transmitter and the receiver radiates the electromagnetic signal and captures the reflected electromagnetic signal. The antenna may be movable. A main controller controls operation of the transmitter and the receiver and the movement of the antenna. The reflected energy detecting device may further include at least one platform to support a remote reflector that is dimensioned and configured to redirect the transmitted electromagnetic signal in a desired direction, and a platform controller that communicates with the main controller and maintains alignment between the remote reflector and the antenna.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4276 Filed 8–30–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Draft Environmental Impact Statement for Center Hill Dam and Lake, Changes to Center Hill Lake Elevations, DeKalb County, TN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Corps of Engineers, Nashville District, U.S. Fish and Wildlife Service (Cooperating Agency), and the Tennessee Valley Authority (Cooperating Agency) have prepared a Draft Environmental Impact Statement (DEIS). The DEIS is necessary to provide National Environmental Policy Act (NEPA) compliance to address changes that could include, but are not limited to water quality, aquatic, riparian, and terrestrial habitat, recreation, water supply, flood storage, economics, hydropower production, and safety as a result of operating Center Hill Lake significantly below normal pool elevations for extended periods of time.

DATES: Written comments must be received by the Corps of Engineers on or before October 19, 2007.

ADDRESSES: Written comments on issues to be considered in the DEIS shall be mailed to: Joy Broach or Patty Coffey, Project Planning Branch, Nashville District Corps of Engineers, P.O. Box 1070 (PM–P), Nashville, TN 37202–1070.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the notice, please contact Joy Broach, Environmental Team, (615) 736–7956, or Patty Coffey, Environmental Team, (615) 736–7865.

SUPPLEMENTARY INFORMATION:

1. Center Hill Dam is currently suffering from severe dam seepage problems. A comprehensive plan for repairs has been approved; however, these repairs will take 7–10 years to implement. Until the repairs are sufficiently complete, the Corps has determined that it is in the public's interest to operate Center Hill Lake at lower pool elevations.

2. The U.S. Fish and Wildlife Service is a Cooperating Agency because of the potential to affect listed species. The Tennessee Valley Authority is a Cooperating Agency because of the potential to affect electrical power production.

3. This notice serves to solicit comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received by us will be considered during the preparation of the Final Environmental Impact Statement (FEIS).

4. *Public Meetings:* At present, no public meetings have been scheduled to scope for potential issues to be evaluated in the FEIS. Requests for public meetings should be directed to Mr. William Peoples, Chief, Public Affairs Office, U.S. Army Corps of Engineers, Nashville District, Nashville, TN, 37202–1070. Mr. Peoples may be reached by telephone at (615) 736–7834.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4277 Filed 8–30–07; 8:45 am]

BILLING CODE 3710–GF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement To Analyze a Long Island Sound Dredged Material Management Plan

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Draft Programmatic Environmental Impact Statement (DPEIS) will evaluate the overall impacts of various alternatives identified in a Long Island Sound Dredged Material Management Plan (LIS DMMP) for management of dredged material in the Long Island Sound (LIS) region. The overall goal of the LIS DMMP is to develop a comprehensive plan for dredged material management in Long Island Sound using a broad-based public process that protects the environment based on best scientific data and analysis, while meeting society's need for safe and economically viable navigation for water-based commerce, transportation, national security, and other public purposes. The LIS DMMP will identify potential environmentally acceptable, practicable management plans that can be utilized by the Corps of Engineers (Corps) in maintaining Federal navigation projects, as well as various non-Corps dredging proponents in their analysis of options to manage non-Corps dredging projects. Some alternative disposal methods may be implemented on the basis of the PEIS, while others may require additional analysis at the project level. As specific alternatives are put in place to implement a given management option, more detailed National Environmental Policy Act (NEPA) documents may be prepared by the Corps and other Federal agencies, and such NEPA documents will evaluate specific impacts from implementing a particular management option.

ADDRESSES: U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742–2751.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DPEIS can be answered by: Mr. Mike Keegan, (978) 318–8657, e-mail: *Michael.f.keegan@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Governors of Connecticut and New York, in a joint letter dated February 8, 2005, requested the Corps to develop a regional DMMP for the LIS region. In

June 2006, the Corps of Engineers, New England District completed a Preliminary Assessment (PA) to document the need for a comprehensive DMMP for the LIS region. The PA concluded that successful completion of a LIS DMMP is critical to the Corps' ability to maintain the region's civil works navigation projects, and to provide future navigation improvements to the system of Federal waterways in the LIS region. Appropriate future cost-effective management methods and future dredged material capacities must be identified to serve both Federal and non-Federal project needs in this region for the long-term health of the region's economy, including its navigation-dependent industries and activities. The Corps prepares NEPA documents to evaluate the environmental impacts of the actions and alternatives analyzed in dredged material management plans. In preparing the current DPEIS, the Corps expects this document to be used as part of the NEPA analysis for both Corps and non-Corps future dredging projects through tiering and incorporation by reference. Issues to be analyzed in the DPEIS may include potential impacts to: shipping and navigation; commercial and recreational fisheries and shellfisheries; water quality; sediment quality; biological resources, including threatened and endangered species; bioavailability of contaminants; cultural resources; recreational activities such as use of beaches, refuges, and natural areas; wetlands; and other potential habitat restoration opportunities. The DPEIS will be prepared in coordination with other environmental review and consultation requirements under the Clean Water Act, National Historic Preservation Act, Endangered Species Act, Coastal Zone Management Act, and other relevant and appropriate statutes and Executive Orders.

There are many harbors, channels and navigation-dependent facilities in Connecticut and New York within Long Island Sound that must undergo periodic maintenance dredging to ensure safe navigation. Some harbors occasionally must be deepened beyond historical depths to meet changing economic and safety needs. In order to manage all of the dredged material from harbors in the LIS region generated by both Federal and non-Federal interests in the next twenty years, the DMMP and DPEIS will be identifying the potential volume of material and identifying and evaluating alternatives that could be used to manage such a volume of dredged material. Thus, future Federal and non-Federal projects can use the DMMP and its associated PEIS to help satisfy legal requirements of NEPA, the Clean Water Act, and the Marine Protection, Research, and Sanctuaries Act (MPRSA).

The LIS DMMP will include an in-depth planning analysis of reasonable potential dredged material placement/disposal alternatives, including open-water disposal, beneficial use, upland disposal, and treatment technologies, and this analysis will be used as a basis for future individual permit and project approval decisions related to alternatives analysis for dredging in the LIS region. To accomplish this, the LIS DMMP will examine dredging needs, sediment and water quality, disposal alternatives and environmental impacts on a harbor-by-harbor basis. Consistent with the Designation Rule for the Western and Central Long Island Sound Dredged Material Disposal Sites, 40 CFR 228.14(b)(4), the DMMP will be identifying potential procedures and standards for the use of practicable alternatives for dredged material disposal in Long Island Sound. The various alternatives and the information associated with such plans will provide the Corps and other navigation users with an array of feasible options that will meet their dredged material management needs.

The LIS DMMP and DPEIS will identify a practicable, comprehensive and coordinated regional practicable strategy for technically feasible and environmentally sound management of material dredged from Long Island Sound. These documents will identify potential environmentally acceptable, practicable management alternatives that can be utilized by various dredging proponents in their analysis of options to manage dredging projects. These alternatives will likely include, but not be limited to:

- Open-water placement.
- Alternative management strategies for treating or reusing dredged materials, including the use of decontamination and sediment processing technologies.
- Beneficial reuse of dredged material such as:
  - Open and closed landfills;
  - Existing upland dredged material disposal areas;
  - Current or proposed transportation improvements;
  - Temporary dredged material storage;
  - Asphalt, cement and other aggregate use;
  - Large scale development use;
  - Brownfield remediation;
  - Use at closed mines and quarries;
  - Placement at beaches for beneficial use;
  - Agricultural use;
  - Habitat restoration projects.

Full public participation of affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties is invited. All interested parties are encouraged to submit their names and addresses to (see **ADDRESSES**), to be placed on the project mailing list to receive fact sheets, newsletters and related public notices. The Corps will hold public scoping meetings later this year or in 2008 at different locations around the LIS region. Topics and issues to be addressed in the DPEIS, identified in part from responses to this Notice of Intent, will be summarized. The public is invited to attend the scoping meetings and identify additional issues that should be addressed in the DPEIS. The actual date, place and time of the scoping meetings will be announced in respective local newspapers and on the Corps New England District Web page.

It is estimated that the Draft PEIS will be made available to the public in the Fall of 2012.

Dated: 22 August 2007.

Lieutenant Colonel Andrew B. Nelson,

Deputy District Commander, U.S. Army Corps of Engineers, New England.

[FR Doc. 07–4274 Filed 8–30–07; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training in the Gulf of Mexico Range Complex and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) to evaluate the potential environmental effects associated with naval training in the Gulf of Mexico (GOMEX) Range Complex. The Navy proposes to support current and emerging training

operations and Research, Development, Testing, and Evaluation (RDT&E) activities at the GOMEX Range Complex by: (1) Maintaining baseline training and RDT&E operations at current levels; (2) increasing training and RDT&E operations from current levels as necessary to support the Fleet Readiness Training Plan (FRTP); (3) accommodating mission requirements associated with force structure changes, including those resulting from the introduction of new platforms (vessels, aircraft and weapons systems); and (4) implementing enhanced range complex capabilities.

The EIS/OEIS study area is the GOMEX Range Complex, which encompasses portions of the Gulf, as well as portions of the southeastern states of Florida, Alabama, Mississippi, Louisiana, and Texas. The GOMEX Range Complex consists of targets and instrumented areas, airspace, surface and subsurface operations areas (OPAREAs), and land range facilities. Together the GOMEX Range Complex encompasses: 15 square nautical miles (nm^2) of land area; 43,390 nm^2 of special use airspace (SUA); 17,520 nm^2 of off-shore surface and subsurface OPAREA; and 12,072 nm^2 of shallow ocean area less than 100 fathoms (600 feet).

The scope of actions to be analyzed in this EIS/OEIS includes current and proposed future Navy training and RDT&E activities within Navy-controlled operating areas, airspace, and ranges. It also includes proposed Navy-funded range capabilities enhancements, including infrastructure improvements supporting range complex training and RDT&E activities. Training activities involving use of active sonar are conducted in the GOMEX Range Complex; however, those potential effects are being analyzed in detail in a separate document, the Atlantic Fleet Active Sonar Training (AFAST) EIS/OEIS. This separate sonar EIS/OEIS addresses active sonar use as a whole by the Atlantic Fleet in the western Atlantic Ocean and in the Gulf of Mexico. The analysis of the AFAST EIS/OEIS will be incorporated into the GOMEX Range Complex EIS/OEIS to account for active sonar effects that could occur within the geographic area of the GOMEX Range Complex.

DATES: Four public scoping meetings will be held. The meeting dates are:

1. Monday, September 24, 2007, 5 p.m.–8 p.m., Panama City, FL.

2. Tuesday, September 25, 2007, 5 p.m.–8 p.m., Pensacola, FL.

3. Wednesday, September 26, 2007, 5 p.m.–8 p.m., Kenner, LA.

4. Friday, September 28, 2007, 5 p.m.–8 p.m., Corpus Christi, TX 78401.

ADDRESSES: Four public scoping meetings will be held in Florida, Louisiana, and Texas to receive oral and/or written comments on environmental concerns that should be addressed in the EIS/OEIS. These public scoping open houses will be held at the following locations:

1. Monday, September 24, 2007, 5 p.m.–8 p.m., Gulf Coast Community College, 5230 West Highway 98, Panama City, FL 32401.

2. Tuesday, September 25, 2007, 5 p.m.–8 p.m., Pensacola Junior College (Warrington Campus), 5555 Highway 98 West, Pensacola, FL 32507.

3. Wednesday, September 26, 2007, 5 p.m.–8 p.m., Alfred Bonnabel High School, 2801 Bruin Drive, Kenner, LA 70065.

4. Friday, September 28, 2007, 5 p.m.–8 p.m., Holiday Inn-Emerald Beach Hotel, 1102 South Shoreline Boulevard, Corpus Christi, TX 78401.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southeast, Post Office Box 30 (Building 135 North, Ajax Street), Naval Air Station Jacksonville, Jacksonville, FL, 32212–0030, ATTN: Mr. Bob Riley (Code OPC5), telephone: 904–542–6125.

SUPPLEMENTARY INFORMATION: The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas. For that reason, Title 10 U.S.C. Section 5062 directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, OPAREAs and airspace where they can develop and maintain skills for wartime missions and conduct RDT&E of naval weapons systems. As such, Navy ranges, OPAREAs, and airspace must be maintained and/or enhanced to accommodate necessary training and testing activities in support of national security objectives. The purpose of the proposed action is to achieve and maintain Fleet readiness using the GOMEX Range Complex to support current, emerging, and future training operations; RDT&E operations; expand warfare missions; and upgrade and modernize existing range capabilities to enhance and sustain Navy training and RDT&E.

The need for the proposed action is to provide range facilities for the training and equipping of combat capable naval forces ready to deploy worldwide. In this regard, the GOMEX Range Complex furthers the Navy's execution of roles and responsibilities under U.S.C Title 10, Section 5062. To implement this mandate, the Navy needs to: Maintain current levels of military readiness by training in the GOMEX Range Complex; accommodate future increases in operational training tempo in the GOMEX Range Complex and support rapid deployment of naval units or strike groups; achieve and sustain readiness of ships and squadrons so the Navy can quickly surge significant combat power in the event of a national crisis or contingency operation, and as is consistent with the FRTP; support acquisition and implementation into the Fleet of advanced military technology and testing and training needed for new platforms (vessels, aircraft and weapons systems); and maintain long-term viability of the GOMEX Range Complex while protecting human health and the environment, and enhancing the quality, communication capability, and safety of the GOMEX range complex.

Three alternatives will be evaluated in this EIS/OEIS: (1) The No Action Alternative is the continuation of current operations and support of existing range capabilities; (2) Alternative 1 consists of all elements of the No Action Alternative plus increased operational training, expanded warfare missions, accommodation of force structure changes, and implementation of enhancements, to the minimal extent possible to meet the components of the proposed action; and (3) Alternative 2 consists of all elements of Alternative 1 plus an additional increase in operational tempo and frequency of training events optimizing training in the GOMEX Range Complex in support of future contingencies, and better exploitation of the Joint National Training Capability (JNTC). Exploitation of the JNTC includes an increase in post Base Realignment and Closure Gulf-based F–18 and E–2 aircraft, and transient Navy participation in Navy and joint training opportunities afforded by proximity to DoD installations in the southeastern United States.

This EIS/OEIS will evaluate the environmental effects associated with: airspace; noise; range safety; natural land resources; water resources; air quality; biological resources, including threatened and endangered species; land use; socioeconomic resources; infrastructure; and cultural resources. The analysis will include an evaluation of direct and indirect impacts, and will account for cumulative impacts from other Navy activities in the GOMEX

Range Complex. No decision will be made to implement any alternative until the EIS/OEIS process is completed and a Record of Decision is signed by the Assistant Secretary of the Navy (Installations and Environment).

The Navy is initiating the scoping process to identify community concerns and local issues to be addressed in this EIS/OEIS. Federal agencies, state agencies, local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that should be addressed in the EIS/OEIS. Written comments must be postmarked by November 5, 2007 and should be mailed to: Naval Facilities Engineering Command Southeast, Post Office Box 30 (Building 135 North, Ajax Street), Naval Air Station Jacksonville, Jacksonville, FL 32212–0030, Attention: Mr. Bob Riley (Code OPC5), telephone: 904–542–6125. Comments can also be submitted no later than November 5, 2007 via the project Web site: *http://www.GOMEXRangeComplexEIS.com.*

Dated: August 23, 2007.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–17360 Filed 8–30–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: High School Equivalency Program (HEP) Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 61.

Burden Hours: 2,440.

Abstract: For the Migrant HEP program, a customized Annual Performance Report (APR) that goes beyond the generic 524B is requested to facilitate the collection of more standardized and comprehensive data to inform Government Performance and Results Act (GPRA), to improve the overall quality of data collected, and to increase the quality and quantity of data that can be used to inform policy decisions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3379. 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. E7–17338 Filed 8–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

Dates:

Applications Available: August 31, 2007. Deadline for Transmittal of Applications: October 30, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty of Institutions of Higher Education (IHEs) to engage in research abroad in modern foreign languages and area studies.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2008 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere

(excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. We are particularly interested in applications that address the following competitive priority. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 663.21(d)(2) we award an additional five (5) points to an application that meets this priority.

This priority is:

A research project that utilizes one or more of the following critical languages: Arabic, Chinese, Japanese, Korean, Russian, as well as Indic, Iranian, and Turkic language families.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $1,395,000 for new awards for this program for FY 2008. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000—$100,000.

Estimated Average Size of Fellowship Awards: $60,000.

Estimated Number of Fellowship Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning June 1, 2008. Faculty may request funding for 3–12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty applicants can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/iegpsfra/applicant.html.*

IHEs and faculty applicants can also obtain a copy of the application package by contacting Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by e-mail: *amy.wilson@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the application narrative to 10 pages and the bibliography to two (2) pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if a faculty applicant applies these standards and exceeds the page limits.

3. *Submission Dates and Times:* Applications Available: August 31, 2007. Deadline for Transmittal of Applications: October 30, 2007.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. Please note that the application availability date for this competition is August 31, 2007. For information (including dates and times) about how to submit an IHE's application electronically or by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than

two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. Electronic Submission of Applications.

Applications for grants under the Fulbright-Hays Faculty Research Abroad Fellowship Program –CFDA Number 84.019A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *amy.wilson@ed.gov:* Name of university and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than August 29, 2007, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete and submit reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.

• The IHE must complete the electronic submission of the grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7:00 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• Faculty applicants will not receive additional point value because the faculty applicant submits his or her application in electronic format, nor will we penalize the IHE or faculty applicant if it qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including the Application for Federal Education Assistance (SF 424), the ED supplement to the SF 424, and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a faculty applicant uploads a file type other than the three file types specified above or submits a password protected file, we will not review that material.

• Both the IHE's and the faculty applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual faculty applicant electronically submits his or her application to their IHE, the faculty member will receive an automatic acknowledgment. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgment by email. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the e-Application system is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the

unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the e-Application system because—

- The IHE or a faculty applicant does not have access to the Internet; or
- the IHE or a faculty applicant does not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K. Street, NW., Suite 6000, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.019A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address the IHE uses, the IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. Submission of Paper Applications by Hand Delivery.

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department:

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which the IHE is submitting its application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

V. Application Review Information

Faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the faculty applications. Each panel reviews, scores and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

Selection Criteria: The following selection criteria for this competition are from 34 CFR 663.21 and are as follows: The maximum score for all of the criteria, including the competitive preference priority is 105 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) the statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) the relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) the preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) the justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) the applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and (6) the objectives of the

project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) the overall strength of the applicant's academic record (teaching, research, contributions, professional association activities (10 points); (2) the applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points); (3) the applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) the applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notice (GAN). We may notify the IHE informally, also.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting International Resource Information System (IRIS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Fulbright-Hays Faculty Research Abroad Fellowship Program:

The average language competency score of Fulbright-Hays Faculty Research Abroad fellows at the end of their research period (post-test) minus the average language competency score at the beginning of their research period (pre-test). All grantees will be expected to provide documentation of the improved language proficiency of the fellows through IRIS.

VII. Agency Contact

For Further Information Contact: Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by e-mail: *amy.wilson@ed.gov.*

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

VIII. Other Information

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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: August 28, 2007.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E7–17362 Filed 8–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A.

Dates: Applications Available: August 31, 2007. Deadline for Transmittal of Applications: October 4, 2007. Deadline for Intergovernmental Review: December 4, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects are short-term and include seminars, curriculum development, or group research or study. This competition also will support advanced overseas intensive language projects, which give advanced language students the opportunity to study languages overseas.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 664.31(g) and 664.32).

Absolute Priority: For FY 2008, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Within this absolute priority, we give competitive preference to applications that address the following priorities.

Competitive Preference Priority I: For FY 2008 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), and 664.31(g) we award an additional five (5) points to an application that meets this priority.

This priority is:

Applications that propose short-term projects abroad and advanced overseas intensive language programs in the countries in which the following critical languages are spoken: Arabic, Chinese, Japanese, Korean, Russian, as well as

the Indic, Iranian, and Turkic language families.

Competitive Preference Priority II: For FY 2008, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), and 664.31(g) we award an additional five (5) points to a short-term project abroad application, that meets this priority.

This priority is:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Program Authority: 22 U.S.C. 2452.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $12,610,000 for the Overseas programs for FY 2008, of which we intend to allocate $4,263,000 for the GPA competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: As part of its FY 2008 budget request, the Administration proposed to continue to allow funds under this program to be used to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United States' national security in fields outside teaching, including government, the professions, or international development. Therefore, institutions of higher education may propose projects for visits and study in foreign countries by individuals in these fields, in addition to those planning a teaching career. However, authority to use funds for participants outside of the field of teaching depends on final Congressional action. Applicants will be given an opportunity to amend their applications if this authority is not provided.

Estimated Range of Awards: $50,000–$90,000 for short-term projects; $50,000–$375,000 for the advanced overseas intensive language projects.

Estimated Average Size of Awards: $74,000 for short-term abroad projects and $104,000 for the advanced overseas intensive language projects.

Maximum Award: We will reject any short-term abroad project application that proposes a budget exceeding $90,000 for a single budget period of 12 months. We will reject any advanced overseas intensive language application that proposes a budget exceeding $375,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months for short-term abroad projects and up to 48 months for the advanced overseas intensive language projects.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education (IHE), (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site: *http://www.ed.gov/programs/iegpsgpa/index.html.*

You can also obtain a copy of the application package by contacting Dr. Lungching Chiao or Ms. Michelle Guilfoil, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or (202) 502–7625 or by e-mail: *lungching.chiao@ed.gov* or *michelle.guilfoil@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs may be single spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit only applies to the application narrative and bibliography. The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the Program Narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you apply these standards and exceed the page limit.

3. *Submission Dates and Times:* Applications Available: August 31, 2007. Deadline for Transmittal of Applications: October 4, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid

in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: December 4, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Fulbright-Hays, Groups Projects Abroad Program—CFDA Number 84.021A must be submitted electronically using the Governmentwide Grants.gov Apply site at: *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit the application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You can access the electronic grant application for the GPA Program at: *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.021, not 84.021A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider the application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve the application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit the application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipts by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to its application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m.,

Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact either of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and can submit the application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lungching Chiao, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.021A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2008, short-term project applications will be reviewed by separate panels according to world area. Advanced overseas intensive language projects will be reviewed by one panel across world areas. A rank order from highest to lowest score will be developed for each of the two types of projects and will be used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points), (b) quality of key personnel (10 points), (c) budget and cost effectiveness (10 points), (d) evaluation plan (20 points), (e) adequacy of resources (5 points), (f) potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points), (g) relevance to the institution's educational goals and its relationship to its program development in modern foreign languages and area studies (5 points), (h) the extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized (10 points), and (i) the extent to which the proposed project addresses the competitive preference priorities (10 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) system to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the objective for the GPA program is to provide overseas training opportunities in area studies and foreign languages for faculty, teachers, and students in areas of the world where less commonly taught languages are spoken.

The Department will use the following measures to evaluate the success of the program in meeting this objective.

GPA Performance Measure:

a. The difference between the average language competency of the Fulbright-Hays Group Projects Abroad program recipients at the end of their period of instruction and their average competency at the beginning of the period.

b. Percentage of GPA projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

The information provided by grantees in their performance reports submitted via the electronic International Resource Information System (IRIS) will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://www.ieps-iris.org/iris/pdfs/GPA.pdf.*

VII. Agency Contacts

For Further Information Contact: Dr. Lungching Chiao or Ms. Michelle Guilfoil, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or (202) 502–7625 or by e-mail: *lungching.chiao@ed.gov* or *michelle.guilfoil@ed.gov.*

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Dated: August 28, 2007.

Diane Auer Jones,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. E7–17365 Filed 8–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Evaluation of Conversion Magnet Schools

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 ''Evaluation of Conversion Magnet Schools'' (18–13–18). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. IES awarded a contract to American Institutes for Research (AIR) and Berkeley Policy Associates (BPA) in September 2006 to conduct this evaluation. IES has been collaborating with the Department's Office of Innovation and Improvement (OII) to plan and implement the study of the relationship between magnet school conversion and student outcomes at the elementary school level.

The study will occur in two phases during which the following questions will be addressed:

(1) Are sufficient data available from the 2004 and 2007 Magnet Schools Assistance Program (MSAP) grantees to conduct an evaluation of elementary conversion magnet schools and provide descriptive analyses of such schools?

(2) What is the relationship of magnet school conversion to (i) The educational achievement of students attending the magnet schools that are their neighborhood schools (resident students); (ii) the reduction of minority group isolation in the magnet schools and corresponding district; and, (iii) the educational achievement of non-resident students who apply for admission to over-subscribed magnet programs?

The system will contain information about elementary school students who attend approximately (i) 50 conversion magnet schools and (ii) 100 elementary schools that are not magnet schools that will serve as comparison elementary schools for the purposes of this study. The total number of elementary school students included in this system of records will be approximately 15,000 per year for the years 2004–2005 through 2009–2010 and approximately 7,500 per year for the years 2001–2002 through 2003–2004. The 50 magnet schools in the study are drawn from

school districts that were awarded MSAP grants by OII in 2004 and/or 2007. For each conversion magnet school and its comparison schools, data will be collected for the three years before and for at least the three years after the conversion date.

The system of records will include information about students who attend the elementary schools participating in the evaluation including demographic information (such as race/ethnicity, gender, age, and language status); attendance zone; grade level; and annual English language arts and mathematics test scores.

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 uses for the system of records referenced in this notice on or before October 1, 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 August 28, 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 October 9, 2007 or (2) October 1, 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 uses 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. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *http://comments@ed.gov.*

You must include the term ''Evaluation of Conversion Magnet Schools'' 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 supply an appropriate aid, such as a reader or print magnifier, 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 Part 5b of Title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains 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 the OMB and Congress whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are intended to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

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: August 28, 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:

18–13–18

SYSTEM NAME:

Evaluation of Conversion Magnet Schools.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) 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.

(2) American Institutes for Research, 1070 Arastradero Road, Suite 200, Palo Alto, CA 94304.

(3) Berkeley Policy Associates, 440 Grand Avenue, Suite 500, Oakland, CA 94610–5085.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on elementary school students attending an elementary school in school districts that are recipients of Magnet Schools Assistance Program (MSAP) grants in 2004 and/or 2007. The system will contain information about students who attend approximately (i) 50 conversion magnet schools and (ii) 100 elementary schools that are not magnet schools that will serve as comparison elementary schools for the purposes of this study. The total number of elementary school students included in this system of records will be approximately 15,000 per year for the years 2004–2005 through 2009–2010 and approximately 7,500 per year for the years 2001–2002

through 2003–2004. The 50 magnet schools in the study are drawn from school districts that were awarded MSAP grants by the U.S. Department of Education's Office of Innovation and Improvement in 2004 and/or 2007. For each conversion magnet school and its comparison schools, data will be collected for the three years before or for at least the three years after the conversion date.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include information about the elementary school students participating in the evaluation including student demographic information (such as race/ethnicity, gender, age, and language status); attendance zone; grade level; and annual English language arts (ELA) and mathematics test scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The MSAP, the program being evaluated, is authorized under the Elementary and Secondary Education Act of 1965, as amended, Title V, Part C; 20 U.S.C. 7231–7231j. Sections 5301–5311 of the No Child Left Behind Act of 2001 (NCLB) most recently amended this program. Section 5310 of the NCLB statute authorizes the Secretary of Education to use MSAP monies to evaluate the program. The evaluation being conducted is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563).

PURPOSE(S):

The goal of this study is to assess the relationship between magnet school conversion and student outcomes at the elementary school level. In particular, this system is necessary to provide information about whether and how students' educational achievement and minority group isolation change when elementary schools convert to magnet schools.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses 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 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 must 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 subcontractor 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 and to the sites of the Department's contractor and subcontractor, where this system of records is maintained, is 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 and subcontractor will establish similar sets of procedures at their sites to ensure confidentiality of data. Their systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will 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 subcontractor's systems but to access only 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 will 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).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (Section 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.

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 in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

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 in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

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 in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system will contain records that are obtained from (i) 50 conversion magnet schools and (ii) 100 elementary schools that are not magnet schools that will serve as comparison elementary schools for the purposes of this study. These data, including students' annual English language arts and mathematics

test scores, will be collected from school district databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17367 Filed 8–30–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–179]

Centerpoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

August 22, 2007.

Take notice that on August 17, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amendment to a negotiated rate agreement between CEGT and Chevron U.S.A. Inc. The amended agreement will be effective August 17, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17237 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–596–000; RP07–591–000; RP07–592–000; RP07–598–000; RP07–597–000; RP07–593–000; RP07–599–000; RP07–604–000; RP07–602–000; RP07–605–000; RP07–600–000; RP07–601–000; RP07–603–000; RP07–594–000; RP07–595–000]

Cheyenne Plains Gas Pipeline Company; L.L.C. Colorado Interstate Gas Company; El Paso Natural Gas Company; Gas Transmission Northwest Corporation; MIGC, Inc.; Mojave Pipeline Company; North Baja Pipeline; LLC Northwest Pipeline Corporation; Sabine Pipe Line LLC; Southern Star Central Gas Pipeline, Inc.; Tuscarora Gas Transmission Company; Venice Gathering System, L.L.C.; WestGas InterState, Inc.; Wyoming Interstate Company, LtD; Young Gas Storage Company, LtD; Notice of Proposed Change in FERC Gas Tariff

August 24, 2007.

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, pursuant to section 154.402 of the Commission's Regulations to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to be applied to rates for recovery of 2007 Annual Charges pursuant to Order No. 472, in Docket no. RM87–3–000. The proposed effective date of the tariff sheets is October 1, 2007.

The above-referenced pipelines state that the purpose of their filings is to reflect the revised ACA effective for the twelve-month period beginning October 1, 2007. The pipelines states that their tariff sheets reflect a increase of $.0003 per Dth from $.0016 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $.0019 Dth as specified by the Commission in its invoice dated June 28, 2007 for the Annual Charge Billing—Fiscal Year 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time August 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17266 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. RP07–508–002; RP07–500–002; RP07–478–002, RP07–415–002; RP07–412–003, and RP07–174–003 (Not Consolidated) RP07–509–002; RP07–507–002; RP07–479–002, RP07–414–002; RP07–413–003 and RP07–340–004 (Not Consolidated) RP07–515–002 and RP07–497–002 (Not Consolidated) RP07–499–002 and RP07–498–002 (Not Consolidated)

Columbia Gulf Transmission Company; Columbia Gas Transmission Corporation; Crossroads Pipeline Company; Central Kentucky Transmission Company; Notice of Request To Change Effective Date

August 24, 2007.

Take notice that on August 17, 2007, the above-referenced pipelines tendered for filing their requests that the Commission approve a change in the effective date of certain tariff sheets that have either been approved or are pending in the above-captioned proceedings to coincide with the May 1, 2008 launch date of their new Electronic Bulletin Board.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time August 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17263 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–608–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

August 24, 2007.

Take notice that on August 22, 2007, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Ninth Revised Sheet No. 10, to become effective October 1, 2007.

Cove Point states that the purpose of this filing is to update Cove Point's retainage percentages in accordance with section 1.42 of General Terms and Conditions (GT&C) of its FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17257 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–025]

Dominion Transmission, Inc.; Notice of Compliance Filing

August 24, 2007.

Take notice that on August 21, 2007, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2007:

Thirty-First Revised Sheet No. 31.
Seventh Revised Sheet No. 31A.
Thirty-Fourth Revised Sheet No. 32.
Seventh Revised Sheet No. 32A.
Twentieth Revised Sheet No. 39.
Eighth Revised Sheet No. 39A.

DTI states that the purpose of this filing is to revise DTI's fuel retention percentages applicable to Rate Schedules FT, FTNN, FTNNGSS, FTGSS, FTSC, FTNNSC, IT, and MCS (Wheeling) to reflect the suspension of its Transportation Amortization Adder as of September 1, 2007. DTI states that it is removing the Transportation Amortization Adder in compliance with the terms of its June 22, 2001 settlement in Docket No. RP00–632–003 which requires the adder to be eliminated upon collection of the 5.2895 MMDt allocated to transportation services.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that

document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17260 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–180–000; Docket No. EL03–154–000; Docket No. EL02–114–000; Docket No. EL02–115–000; Docket No. EL02–113–000]

Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Portland General Electric Company; Enron Power Marketing, Inc.; El Paso Electric Company, Enron Power Marketing, Inc., and Enron Capital & Trade Resources Corp.; Notice Shortening Answer Period

July 13, 2007.

On July 13, 2007, Enron Power Marketing, Inc., Enron Energy Services, Inc. and Enron North America Corp. (collectively, ''Enron'') filed a motion for an extension of time to file briefs on exceptions and briefs opposing exceptions to the Initial Decision issued June 21, 2007, in the above-referenced proceeding *Enron Power Mktg., Inc.,* 119 FERC ¶ 63,013 (2007) (July 13 Motion). Among other things, Enron requests that the date for filing answers to its July 13 Motion be shortened in order to allow for an expedited schedule in this proceeding.

By this notice, the date for filing answers to Enron's July 13 Motion is shortened to and including July 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17309 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–230–004]

Entergy Services, Inc; Notice of Filing

August 23, 2007.

Take notice that on August 17, 2007, Entergy Services, Inc., acting as agent for Entergy Gulf States, Inc. submits a compliance filing pursuant to the Commission's July 18, 2007 Order, *ExxonMobil Corporation* v. *Entergy Service, Inc.,* 120 FERC ¶ 61,051.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on, September 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17256 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR07–13–000; PR07–13–001]

Enterprise Alabama Intrastate, LLC; Notice of Shortened Comment Period

August 22, 2007.

Take notice that on August 22, 2007, Enterprise Alabama Intrastate, LLC filed a Stipulation and Agreement of Settlement (Settlement) in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Settlement.

Because no protests were filed in this docket and the Commission Staff supports the Settlement, we are shortening the date for filing initial comments to and including August 24, 2007. Reply comments should be filed on or before August 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17248 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–1–006]

Florida Gas Transmission Company, LLC; Notice of Compliance Filing

August 22, 2007.

Take notice that on August 17, 2007, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, 2nd Substitute Original Sheet No. 206A, with an effective date of May 1, 2007.

FGT states that the filing is being made in compliance with the Commission's Letter Order dated August 2, 2007 in the subject docket.

FGT states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR

385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 pm Eastern Time September 4, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17251 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–607–000]

Florida Gas Transmission Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2007.

Take notice that on August 23, 2007, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2007:

Fifth Revised Sheet No. 7.
Fourth Revised Sheet No. 8.
Fourth Revised Sheet No. 9.
Fourth Revised Sheet No. 11.
Fourth Revised Sheet No. 12.
Fourth Revised Sheet No. 13.
Fourth Revised Sheet No. 14.

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to FGT's Base Fuel Reimbursement Charge Percentage.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17268 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–527–002]

MIGC, Inc.; Notice of Compliance Filing

August 24, 2007.

Take notice that on August 20, 2007, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourteenth Revised Sheet No. 6, to become effective August 15, 2007.

MIGC states that the purpose of the filing is to update the tariff sheets accepted by the Commission's August 15, 2007 Letter Order in this proceeding to reflect revised fuel and L&U rates accepted by the Commission's July 31, 2007 Letter Order issued in Docket No. RP07–514–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17264 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1195–000]

Mittal Steel USA, Inc.; Notice of Issuance of Order

August 22, 2007.

Mittal Steel USA, Inc. (Mittal) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Mittal also requested waivers of various Commission regulations. In particular, Mittal requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mittal.

On August 21, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Mittal, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 20, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Mittal is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mittal, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Mittal's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17241 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–60–003]

PJM Interconnection, LLC; Notice of Filing

July 13, 2007.

Take notice that on July 10, 2007, PJM Interconnection, LLC filed a second amendment to its October 17, 2005 filing in compliance with the Federal Energy Regulatory Commission's request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17310 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–169–004]

Questar Overthrust Pipeline Company; Notice of Compliance Filing

August 24, 2007.

Take notice that on August 21, 2007, Questar Overthrust Pipeline Company (Overthrust) submitted an amendment to the compliance filing made on August 16, 2007, pursuant to the Commission's Order on Tariff Filings issued August 6, 2007, in Docket Nos. RP07–169–000 and RP07–169–001.

Overthrust states that the filing proposes to amend Overthrust's August 16, 2007, compliance filing to correct the pagination for Sheet No. 84.

Overthrust states that copies of the filing have been served upon Overthrust's customers, the public service commissions of Utah and Wyoming and parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17262 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–606–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2007.

Take notice that on August 23, 2007, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 2008:

Fifth Revised Sheet No. 171.
Eighth Revised Sheet No. 172.
First Revised Sheet No. 172A.
Original Sheet Nos. 172B, 172C and 172D.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17267 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1279–000]

Rochester Gas and Electric Corporation; Notice of Filing

August 22, 2007.

Take notice that on August 13, 2007, Rochester Gas and Electric Corporation filed Notice of Termination of its Rate Schedule No. 33, with AES Somerset, to be effective August 31, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on September 4, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17242 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–363–001]

Sabine Pipe Line, LLC; Notice of Negotiated Rate

August 22, 2007.

Take notice that on August 9, 2007, Sabine Pipe Line Company, LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 314, to be effective August 1, 2007.

Sabine states that the proposed change would update its tariff to accurately state the current negotiated rate transaction information as required by section 26.5 of Sabine's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or

before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17249 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–157–007]

Saltville Gas Storage Company L.L.C.; Notice of Negotiated Rate

August 24, 2007.

Take notice that on August 21, 2007, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, reflecting an effective date of September 1, 2007:

Original Sheet No. 19.
Sheet Nos. 20–30.

Saltville states that this filing is being made in connection with a negotiated rate transaction pursuant to section 32 of the General Terms and Conditions of Saltville's Tariff. Saltville states that the tariff sheets listed above identify and describe the negotiated rate transaction, including the exact legal name of the shipper, the negotiated rates, the rate schedule, the contract term, and the contract quantities.

Saltville states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in the captioned proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17261 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG07–65–000]

Scurry County Wind I., P.; Notice of Filing

July 13, 2007.

Take notice that on June 1, 2007, Scurry County Wind I., P. submitted for filing a notice of Self-Recertification of Exempt Wholesale Generator Status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17311 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–2–001]

Western Area Power Administration; Notice of Filing

July 13, 2007.

Take notice that on July 6, 2007 the Western Area Power Administration filed a response and modifications to its Open Access Transmission Tariff, pursuant to the Federal Energy Regulatory Commission's June 28, 2007, Order, *Western Area Power Administration*, 119 FERC ¶61,329 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17308 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–90–003]

WTG Hugoton, LP; Notice of Compliance Filing

August 22, 2007.

Take notice that on August 14, 2007, WTG Hugoton, LP (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 238; First Revised Sheet No. 255 and Original Sheet No. 255A, with an effective date of August 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time September 4, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17238 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–529–001]

Wyoming Interstate Company, Ltd; Notice of Compliance Filing

August 24, 2007.

Take notice that on August 22, 2007, Wyoming Interstate Company, LTD (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective August 17, 2007:

Third Revised Sheet No. 11A.
Eighth Revised Sheet No. 28.

WIC states that the filing is being made in compliance with the Commission Order Date August 16, 2007 in the above listed proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17265 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–19–000]

ConocoPhillips Company, Complainant v. Calnev Pipe Line, LLC, Respondent; Notice of Complaint

August 22, 2007.

Take notice that on August 20, 2007, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and the Commission's Procedural Rules applicable to Oil Pipeline Proceedings, 18 CFR 341(a), ConocoPhillips Company (Complainant) filed a formal complaint against Calnev Pipe Line, LLC (Respondent) alleging that the Respondent has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App. 1, *et seq.*, by charging unjust and unreasonable rates for the Respondent's jurisdictional interstate service, as more fully set forth in the Complaint.

The Complainant states that copies of the complaint have been served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on September 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17243 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–89–000]

H–P Energy Resources, LLC, Complainant v. PJM Interconnection, LLC, Respondent; Notice of Complaint

August 22, 2007.

Take notice that on August 20, 2007, pursuant to sections 206 and 212 of the Rules and Practice and Procedure, 18 CFR 385.206 and 385.212 and sections 205 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), H–P Energy Resources, LLC (Complainant) filed a formal complaint against PJM Interconnection, LLC (Respondent) alleging that, in contravention of the Federal Power Act and the rules and policies governing the Reliability Pricing Model, the Respondent has failed to identify on a timely basis the Incremental Import Capability for merchant transmission projects S119 and S120 (upgrades of the Lexington-Dooms and Bristers-Ox 500 kv circuits).

The Complainant has requested a shortened answer period and fast track processing of the complaint.

The Complainant states that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on August 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17240 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

August 23, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–126–000.

Applicants: Grant Peaking Power Holdings, LLC; Colbath Peaking Power, LLC; Lincoln Peaking Power Holdings, LLC; DTE Energy Services, Inc.; TPF II LC, LLC; Lincoln Generating Facility, LLC; Crete Energy Venture, LLC.

Description: Grant Peaking Power Holdings, LLC et al submits a Joint Application for disposition of jurisdictional facilities and request for waivers and expedited consideration.

Filed Date: 08/16/2007.

Accession Number: 20070817–0054.

Comment Date: 5 p.m. Eastern Time on Thursday, September 06, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–77–000.

Applicants: Airtricity Champion Wind Farm, LLC.

Description: Airtricity Champion Wind Farm, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 08/21/2007.

Accession Number: 20070823–0027.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Docket Numbers: EG07–78–000.

Applicants: Airtricity Roscoe Wind Farm, LLC.

Description: Airtricity Roscoe Wind Farm, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 08/21/2007.

Accesion Number: 20070823–0031.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–1437–003.

Applicants: Triton Power Michigan, LLC.

Description: Triton Power Michigan LLC Notice of Non-Material Change in Status.

Filed Date: 08/22/2007.

Accession Number: 20070822–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 4, 2007.

Docket Numbers: ER02–1785–011.

Applicants: Thermo Cogeneration Partnership, LP.

Description: Thermo Cogeneration Partnership, LP Notice of Non-Material Change in Status.

Filed Date: 08/22/2007.

Accession Number: 20070822–5014.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 4, 2007.

Docket Numbers: ER02–2560–009.

Applicants: Louisville Gas & Electric Company.

Description: Refund Report of Louisville Gas/Kentucky Utilities in Response to July 20, 2007 Order.

Filed Date: 08/20/2007.

Accession Number: 20070820–5039.

Comment Date: 5 p.m. Eastern Time on Monday, September 10, 2007.

Docket Numbers: ER03–421–013.

Applicants: PPL Wallingford; PPL Wallingford Energy, LLC.

Description: PPL Wallingford Energy, LLC and PPL EnergyPlus, LLC submits a compliance filing.

Filed Date: 08/21/2007.

Accession Number: 20070822–0075.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Docket Numbers: ER06–18–009.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to comply with directives set forth in FERC's 7/23/07 Order.

Filed Date: 08/22/2007.

Accession Number: 20070823–0030.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: ER07–577–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an Unexecuted Facilities Construction Agreement with Endeavor Power Partners, LLC in compliance with FERC's 7/19/07 Order.

Filed Date: 08/20/2007.

Accession Number: 20070821–0020.

Comment Date: 5 p.m. Eastern Time on Monday, September 10, 2007.

Docket Numbers: ER07–1051–001.

Applicants: Texzon Utilities, Ltd.

Description: Texzon Utilities, Ltd submits an amended notice of succession and an amended filing to the 6/14/07 filing.

Filed Date: 08/16/2007.

Accession Number: 20070821–0022.

Comment Date: 5 p.m. Eastern Time on Thursday, September 06, 2007.

Docket Numbers: ER07–1100–002.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies' Substitute Second Revised Network Integration Transmission Service Agreement and Substitute Network Operating Agreement with City of North Little Rock, Arkansas.

Filed Date: 08/20/2007.

Accession Number: 20070822–0035.

Comment Date: 5 p.m. Eastern Time on Monday, September 10, 2007.

Docket Numbers: ER07–1255–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Exhibit I—corrected Substitute Original Sheet 1223 to FERC Electric Tariff, Fifth Revised Volume 1 related to energy imbalance market.

Filed Date: 08/16/2007.

Accession Number: 20070822–0074.

Comment Date: 5 p.m. Eastern Time on Thursday, September 06, 2007.

Docket Numbers: ER07–1286–000; ER07–1286–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revisions to Schedule 2 of their Open Access Transmission Tariff.

Filed Date: 08/16/2007.

Accession Number: 20070817–0043; 20070822–0042.

Comment Date: 5 p.m. Eastern Time on Thursday, September 06, 2007.

Docket Numbers: ER07–1292–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp provides notice re the revised transmission Access Charges effective 7/1/07 to implement the revised Transmission Revenue Requirement of San Diego Gas & Electric Co.

Filed Date: 08/17/2007.

Accession Number: 20070821–0019.

Comment Date: 5 p.m. Eastern Time on Friday, September 07, 2007.

Docket Numbers: ER07–1293–000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Co submits unexecuted agreement with Escanaba Municipal Electric Utility for the sale of short-term capacity and energy under Electric Rate Schedule 59, effective 8/18/07.

Filed Date: 08/17/2007.

Accession Number: 20070821–0024.

Comment Date: 5 p.m. Eastern Time on Friday, September 07, 2007.

Docket Numbers: ER07–1294–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits amendments to Schedule 12 of the Amended and Restated Operating Agreement.

Filed Date: 08/17/2007.

Accession Number: 20070821–0023.

Comment Date: 5 p.m. Eastern Time on Friday, September 07, 2007.

Docket Numbers: ER07–1295–000.

Applicants: Centennial Power, LLC.

Description: Centennial Power, LLC submits a notice of cancellation of their FERC Electric Tariff, Original Volume 1.

Filed Date: 08/20/2007.

Accession Number: 20070821–0021.

Comment Date: 5 p.m. Eastern Time on Monday, September 10, 2007.

Docket Numbers: ER07–1297–000.

Applicants: Chien Energy, LLC.

Description: Chien Energy, LLC submits a petition for acceptance of initial tariff, waivers and blanket authority re their FERC Electric Rate Schedule 1.

Filed Date: 08/21/2007.

Accession Number: 20070822–0034.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Docket Numbers: ER07–1298–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc submits the Wholesale Power Supply Contract with Boone REMC designated as Rate Schedule 33.

Filed Date: 08/22/2007.

Accession Number: 20070823–0018.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–3–001.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits First Revised Sheet 81 et al. to FERC Electric Tariff, Third Revised Volume 4, to be effective 8/1/07.

Filed Date: 08/21/2007.

Accession Number: 20070823–0028.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis Sr.,

Acting Deputy Secretary.

[FR Doc. E7–17302 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 906–006]

Virginia Electric & Power Company; Notice of Availability of Environmental Assessment

August 23, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Cushaw Hydroelectric Project, located on the James River, near the Town of Glasgow, Virginia, and has prepared an Environmental Assessment (EA). In the EA, Commission staff, analyze potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Cushaw Project No. 906–006'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Kristen Murphy at (202) 502–6236.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17252 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–10–000]

LNG Development Company, LLC and Oregon Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Oregon LNG Terminal and Pipeline Project, Request for Comments on Environmental Issues and Notice of Public Meetings

August 24, 2007.

The Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Oregon LNG Terminal and Pipeline Project involving the construction and operation of facilities proposed by LNG Development Company, LLC and Oregon Pipeline Company (collectively referred to as Oregon LNG). The facilities would be located in northern Oregon and consist of a liquefied natural gas (LNG) import terminal in Warrenton, Oregon, and an associated 117-mile-long natural gas pipeline from the LNG import terminal southeastward across Clatsop, Washington, Yamhill, Marion, and Clackamas Counties, Oregon, to an interconnection with the existing Williams Northwest Pipeline system near Molalla, Oregon.

As a part of this evaluation, FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project and the Coast Guard will assess the safety and security of the project. As described below, the FERC and the Coast Guard will hold a joint public meeting to allow the public to provide input to these assessments.

The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. This Notice of Intent (NOI) explains the scoping process we [1] will use to gather information on the project from the public and interested agencies and summarizes the process that the Coast Guard will use. Your input will

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Emergy Projects.

help identify the issues that need to be evaluated in the EIS and in the Coast Guard's safety and security assessment.

The FERC will be the lead federal agency in the preparation of an EIS that will satisfy the requirements of the National Environmental Policy Act (NEPA). The Coast Guard will serve as a cooperating agency during preparation of the EIS. In addition, the U.S. Army Corps of Engineers; U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service; the U.S. Environmental Protection Agency; the U.S. Department of the Interior, Fish and Wildlife Service; and the Oregon Department of Energy have been requested to serve as cooperating agencies in preparation of the EIS.

Comments on the project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this NOI. In lieu of sending written comments, we invite you to attend the public scoping meetings scheduled as follows:

Tuesday, September 18, 2007, 7:00 p.m.

Warrenton High School Gymnasium, 1700 SE Main Street, Warrenton, OR 97146, telephone: 503–861–3317 (contact: Rod Heyen).

Wednesday, September 19, 2007, 7:00 p.m.

Forest Grove Armory, 2950 Taylor Way, Forest Grove, OR 97116–1541, telephone: 971–219–7297 (contact: Steve Johnson).

Thursday, September 20, 2007, 7:00 p.m.

Woodburn City Council Chambers, 270 Montgomery St., Woodburn, OR 97071, telephone: 503–982–5228 (contact: Jan Clay).

The first public scoping meeting listed above (Warrenton) will be combined with the Coast Guard's public meeting regarding the maritime safety and security of the project. At the meeting, the Coast Guard will discuss: (1) The waterway suitability assessment that the applicant will conduct to determine whether or not the waterway can safely accommodate the LNG carrier traffic and operation of the planned LNG marine terminal; and (2) the facility security assessment that the applicant will conduct in accordance with the regulations of the Maritime Transportation Security Act to assist with the preparation of a Facility Security Plan.

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 Code of Federal Regulations (CFR) Part 105, and recommendation for siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a Letter of Intent from an owner or operator intending to build a new LNG facility, the Coast Guard Captain of the Port conducts an analysis based on:

- The physical location and layout of the facility and its berthing and mooring arrangements;
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility;
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility;
- Density and character of the marine traffic on the waterway;
- Bridges or other man-made obstructions in the waterway;
- Depth of water;
- Tidal range;
- Natural hazards, including rocks and sandbars;
- Underwater pipelines and cables; and
- Distance of berthed LNG vessels from the channel, and the width of the channel.

This analysis results in a Letter of Recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels, as prescribed by 33 CFR 127.009.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other federal, state, and local government agencies reviewing the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the applicant will be conducting a Waterway Suitability Assessment (WSA), a formal risk assessment evaluating the various safety and security aspects associated with the Oregon LNG Terminal and Pipeline Project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input in the risk assessment process. The results of the WSA will be submitted to the Coast Guard to be used in determining whether the waterway is suitable for LNG traffic.

This NOI is being sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Oregon LNG proposes to construct and operate an LNG import terminal and storage facility, and associated natural gas sendout pipeline with a capacity to deliver up to 1.5 billion cubic feet per day. More specifically, Oregon LNG proposes the following primary project components:

- A marine facility, including LNG unloading equipment and one ship berth capable of handling about 150 LNG carrier ships per year (the capacity of the ships could range from 70,000 to 260,000 cubic meters (m^3) per ship);
- Interconnecting facilities including piping, electrical, and control systems;
- An LNG spill containment and collection system;
- Three full containment LNG storage tanks, each with a nominal usable storage capacity of 160,000 m^3;
- Vapor handling, re-gasification, and sendout systems;
- Utilities, telecommunications, and other supporting systems;
- Administrative, control room, warehouse, security, and other buildings and enclosures;
- Interconnecting roadways and civil works; and
- A 117-mile-long, 30 to 36-inch-diameter natural gas sendout pipeline extending from the LNG terminal to the interconnection with the existing interstate natural gas pipeline system operated by Williams Northwest Pipeline.

A location map depicting Oregon LNG's proposed facilities is attached to this NOI as Appendix 1.[2]

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal or an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impacts that could result if it issues project authorizations to Oregon LNG under sections 3 and 7 of the Natural Gas Act. In addition, the Coast Guard will use the EIS to determine if a Letter of Recommendation should be issued, with or without conditions, under 33 CFR § 127.009. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this NOI, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, and maintenance of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Aquatic resources.
- Vegetation and wildlife.
- Threatened and endangered species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Marine transportation.
- Air quality and noise.
- Reliability and safety.
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this NOI.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. In addition, the Coast Guard, which would be responsible for reviewing the safety and security aspects of the planned project and regulating safety and security if the project is approved, has initiated its review of the project as well.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues, in addition to those agencies that have already agreed to serve as cooperating agencies (as noted above), to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on our previous experience with similar projects in the region. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Oregon LNG Terminal and Pipeline Project.

- Impact of LNG vessel traffic on other users, including commercial ships, fishing, and recreational boaters on the lower Columbia River.
- Potential impacts of dredging the turning basin and LNG ship dock on water quality and estuarine fishery resources.
- Potential impacts of the LNG terminal on residents in Warrenton and the surrounding area, including safety issues at the import and storage facility, noise, air quality, and visual resources.
- Potential for geological hazards, including seismic activity, to have impacts on both the proposed LNG import terminal and sendout pipeline.
- Potential impacts of the pipeline on waterbodies and wetlands, including issues of erosion control.
- Potential impacts of the pipeline on vegetation, including the clearing of forested areas.
- Potential impacts of the pipeline on threatened and endangered species and wildlife habitat.
- Potential impacts of the pipeline on cultural resources.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Oregon LNG Terminal and Pipeline Project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of OEP/DG2E/Gas Branch 2, PJ–11.2.
- Reference Docket No. PF07–10–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC, on or before September 24, 2007.

The Commission strongly encourages electronic filing of any comments in response to this NOI. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can file comments you will need to create a free

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site (excluding maps) at the ''e-Library'' link or from the Commission's Public Reference Room or call (202) 501–8371. For instructions on connecting to e-Library refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

account, which can be accomplished on-line.

The public scoping meetings (dates, times, and locations listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of the meetings will be generated so that your comments will be accurately recorded.

Once Oregon LNG formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may *not* request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

If you wish to remain on the environmental mailing list, please return the attached Mailing List Retention Form (Appendix 2 of this NOI). If you do not return this form, we will remove your name from our mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372), or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number, excluding the last three digits (i.e., PF07–10) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Oregon LNG has established an Web site for this project at *http://www.oregonlng.com.* The Web site includes a project overview, status, potential impacts and mitigation, and answers to frequently asked questions. You can also request additional information by calling Oregon LNG directly at 503–298–4969, or by sending an e-mail to *info@OregonLNG.com.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17259 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI07–11–000]

Bangor Water District; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

August 22, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI07–11–000.

c. *Date Filed:* July 24, 2007.

d. *Applicant:* Bangor Water District.

e. *Name of Project:* Bangor Water District Hydropower Project.

f. *Location:* The proposed Bangor Water District Hydropower Project will be located in the District's existing water transmission pipe, in Penobscot County, near Bangor, Maine.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Kathy Moriarty, General Manager, Bangor Water District, P.O. Box 1129, 614 State Street, Bangor, ME 04402–1129; telephone: (207) 947–4516; e-mail: *http://moriarty@bangorwater.org.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* September 24, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.''

Please include the docket number (DI07–11–000) on any comments, protests, and/or motions filed.

k. *Description of Project*: The proposed Bangor Water District Hydropower Project will include: (1) Two 36-inch-diameter, one-mile-long water intake pipes, connected to a water treatment plant; (2) a 30-inch, 15-mile-long reinforced concrete pipe from the water treatment plant to a point under the Penobscot River, where it splits into two 24-inch reinforced concrete water pipes; (3) a 75-kW Canyon turbine/generator horizontal shaft unit, which will be installed in one of the 24-inch pipes, replacing a pressure reducing valve; (4) the two pipes rejoin, forming a 30-inch main, which conveys water to storage tanks for distribution into the Bangor water system; and (5) appurtenant facilities. The proposed project will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17239 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

August 22, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12808–000.

c. Date filed: July 10, 2007.

d. Applicant: Alabama River Newsprint Company.

e. Name of Project: Claiborne Hydroelectric Project.

f. Location: The proposed project would utilize the existing U.S. Army Corps of Engineers Claiborne Lock & Dam and would be located on the Alabama River in Monroe County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Mike Kelly, Alabama River Newsprint Company, P. O. Box 10, County Road 39, Perdue Hill, Alabama 36470, (251) 743–6440.

i. FERC Contact: Patricia W. Gillis at (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: October 30, 2007.

k. All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12808–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. Description of Project: The proposed project would use the existing U.S. Army Corps of Engineers' Claiborne Lock and Dam and consist of: (1) A proposed powerhouse with an installed capacity of 15-megawatts; (2) a proposed tailrace; (3) a proposed 44-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 85-gigawatt-hours. The applicant plans to sell the generated energy to a local utility.

m. Location of Application: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

p. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

q. Notice of Intent—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit

would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT'', or ''COMPETING APPLICATION'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17244 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12830–000, Project No. 12849–000]

Free Flow Power Corporation FFP Project 4, LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 22, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. Type of Applications: Preliminary Permit (Competing).

b. Applicants, Project Numbers, and Dates Filed:

Free Flow Power Corporation filed the application for Project No. 12830–000 on July 23, 2007.

FFP Project 4, LLC filed the application for Project No. 12849–000 on July 25, 2007.

c. Name of the project is Live Oak Project. The project would be located on the Mississippi River in Plaquemines Parish, Louisiana. The project uses no dam or impoundment.

d. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a–825r.

e. Applicants Contacts: For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536. FFP Project 4, LLC: Mr. Dan Irvin, FFP Project 22, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

f. FERC Contact: Patricia W. Gillis, (202) 502–8735.

g. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12830–000 or P–12849–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. Description of Projects: The project proposed by Free Flow Power Corporation would consist of: (1) 900 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 18-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The Free Flow Power Corporation project would have an average annual generation of 78.84-gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 4, LLC would consist of: (1) 900 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 18-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The FFP Project 4, LLC project would have an average annual generation of 78.84-gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

k. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

l. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17245 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–100]

Before Commissioners, First Light Hydro Generating Company; Notice Rejecting Requests for Rehearing

August 22, 2007.

On July 3, 2007, Commission staff issued an order modifying and approving a shoreline management plan pursuant to article 407 of the license for Housatonic River Project located in Fairfield, Litchfield and New Haven Counties, Connecticut.[1] On August 1, 2007 and August 2, 2007, the City of Dansbury and Connecticut Department of Environmental Protection filed requests for rehearing in this proceeding.

Under section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a), a request for rehearing may be filed only by a party to the proceeding. In order to become a party to any Commission proceeding, an entity must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. The City of Dansbury and Connecticut Department of Environmental Protection did not file motions to intervene. Therefore, their requests for rehearing are rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of the rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2007).

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17246 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

[1] FirstLight Hydro Generating Co., 120 FERC ¶ 62,010 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No: 349–133]

Alabama Power Company; Notice of Application For Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 22, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 349–133.

c. *Date Filed:* August 8, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* Lake Martin in Tallapoosa County, Alabama. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Sr., Engineer, Hydro Services, Alabama Power, 600 North 18th Street, Post Office Box 2641, Birmingham, Alabama, 35291, (205) 257–1403.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* September 24, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any

motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Proposal:* Alabama Power Company is requesting Commission approval to permit DEP Land Company, LLC to use project lands to install additional facilities associated with its Cove Restaurant. Specifically, DEP Land Company, LLC would like to construct a floating dock structure to accommodate eight boats and ten-personal watercraft. The proposed facilities will be for use by customers of the restaurant. Alabama Power Company is also requesting that the Commission authorize it to permit existing residential facilities, that are within the project boundary, for commercial use. Existing facilities include a concrete block seawall and a timber bulkhead seawall for shoreline protection, a stationary wooden pier, a floating wooden platform, and an asphalt and concrete boat ramp that are currently permitted for individual, non-commercial use.

l. *Location of the Applications:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number (P–349) excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17247 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12813–000; Project No. 12860–000]

Free Flow Power Corporation; FFP Project 22 LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Free Flow Power Corporation filed the application for Project No. 12813–000 on July 23, 2007.

FFP Project 22, LLC filed the application for Project No. 12860–000 on July 25, 2007.

c. Name of the project is Gouldsboro Bend Project. The project would be located on the Mississippi River in Orleans and Jefferson Parish, Louisiana. The project uses no dam or impoundment.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536. FFP Project 22 LLC: Mr. Dan Irvin, FFP Project 22, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12813–000 or P–12860–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Free Flow Power Corporation would consist of: (1) 2,650 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 53 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation project would have an average annual generation of 232.14 gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 22, LLC would consist of: (1) 2,650 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 53 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 22, LLC project would have an average annual generation of 232.14 gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlinesupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

k. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

l. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower

Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17253 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12814–000, Project No. 12851–000]

Free Flow Power Corporation, FFP Project 7, LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Free Flow Power Corporation filed the application for Project No. 12814–000 on July 23, 2007.

FFP Project 7, LLC filed the application for Project No.12851–000 on July 25, 2007.

c. Name of the project is Gouldsboro Bend Project. The project would be located on the Mississippi River in Orleans and Jefferson Parish, Louisiana. The project uses no dam or impoundment.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

e. *Applicants Contacts:* For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536. FFP Project 7, LLC: Mr. Dan Irvin, FFP Project 7, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12814–000 or P–12851–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on

each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Free Flow Power Corporation would consist of: (1) 1,000 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 20 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation, project would have an average annual generation of 87.6 gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 7, LLC would consist of: (1) 1,000 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 20 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 7, LLC, project would have an average annual generation of 87.6 gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17254 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–187]

Union Electric Company dba Ameren EU; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 459–187.

c. *Date filed:* August 14, 2007.

d. *Applicant:* Ameren UE.

e. *Name of Project:* Osage Project.

f. *Location:* The project is located on the Osage River, in Benton, Camden, Miller, and Morgan Counties, Missouri. The project is located immediately downstream from the U.S. Army Corps of Engineers' (Corps) Harry S. Truman Dam and occupies 1.6 acres of inundated federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Supervisor, P.O. Box 993, Lake Ozark, MO 65049 phone number (573) 365–9214 or e-mail—*WGreen@ameren.com*

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *Rebecca.martin@ferc.gov*

j. *Deadline for filing comments and or motions:* September 24, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426. Please include the project number (P–459–187) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests permission to allow the Breezes Condominiums to construct eight boat docks with 112 slips along 1,000 feet of shoreline. The property is located along U.S. Business Highway 54 and inside the 1 mile marker (river mile), approximately 1,100 feet upstream and west of Bagnell Dam.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17255 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516–047]

Alleghany Energy Supply Company, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License Articles 404 and 406.

b. *Project No:* 2516–047.

c. *Date Filed:* February 28, and July 23, 2007.

d. *Applicant:* Alleghany Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Project.

f. *Location:* The project is located on the Potomac River in Berkeley and Jefferson Counties, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Charles Simons, Allegheny Energy, 800 Cabin Hill Drive, Greensburg, PA 15601.

i. *FERC Contact:* Mr. Robert Grieve, (202) 502–8752, and e-mail *robert.grieve@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* September 24, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee has completed studies on and consulted with federal and state resource agencies regarding operation of the Dam No. 4 and Dam No. 5 (FERC No. 2517) projects, as required. Based on the results of the study, minor modifications are necessary to articles

404 and 406 of the Dam No. 4 project license that specifies certain operating restrictions for the project. In summary, the licensee proposes to modify Article 404(a) by changing the reference to 1,220 cfs to 1,600 cfs, and modify Article 404(b) by changing the reference to 600 cfs to 800 cfs. The licensee proposes to modify article 406 by changing the reference to 600 cfs to 800 cfs. No changes to the license are necessary for the Dam No. 5 Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17258 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–321]

Grand River Dam Authority (GRDA); Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Project Use of Project Lands and Waters.

b. *Project No:* 1494–321.

c. *Date Filed:* August 9, 2007.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* The Pensacola Project.

f. *Location:* The Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The proposed use is located in Scotty's Cove near the Stoneridge residential development.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Ms. Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *lesley.kordella@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 24, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. The Commission strongly encourages electronic filings.

k. *Description of Proposal:* The licensee requests approval of 29 slips and 12 wave runners to accommodate the Stoneridge residential development. The application states that 27 slips and 12 wave runners were approved by the licensee's Board of Directors on March 19, 2003, but were not filed with the Commission for prior approval and have therefore already been constructed. The current application requests approval for the existing docking structures as well as the two additional slips.

l. *Location of the Applications:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number (P–1494) excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17269 Filed 8–30–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6690–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070255, ERP No. D–BLM–K39018–NV, Kane Springs Valley Groundwater Development Project, To Construct Infrastructure Required to Pump and Convey Groundwater Resources, Right-of-Way Application, Lincoln County Water District, Lincoln County, NV

Summary: EPA expressed environmental concerns about cumulative impacts, conservation, water use efficiency, and the long-term availability of the water supply, and recommends continued collaboration through a regional groundwater framework to ensure efficient long-term sustainable use of the deep carbonate-rock aquifer. Rating EC2.

EIS No. 20070310, ERP No. D–AFS–L65540–WA, Old Curlew Ranger Station Facilities Disposal Project, Proposal to Sell 3-Acre Parcel Including Buildings, Republic Ranger District, Colville National Forest, South Side of Curlew, Ferry County, WA

Summary: EPA does not object to the proposed project. However, we recommended that Forest Service provide the buyer with information on hazardous materials and testing related to the site remediation. Rating LO.

Final EISs

EIS No. 20070262, ERP No. F–NPS–K39103–CA, Giacomini Wetland Restoration Project, Propose to Restore Natural Hydrologic and Ecological Processes, Golden Gate National Recreation Area, Point Reyes National Seashore, Marin County, CA

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070329, ERP No. F–GSA–F60010–OH, Cincinnati National Institute for Occupational Safety and Health (NIOSH) Laboratories Consolidation, Site Selection, Hamilton and Clermont Counties, OH

Summary: EPA's previous concerns were resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070353, ERP No. F–NOA–A91071–00, Atlantic Large Whale Take Reduction Plan, Proposed Amendments to Implement Specific Gear Modifications for Trap/Pot and Gillnet Fisheries, Broad-Based Gear Modifications, Exclusive Economic Zone (EEZ), ME, CT and RI

Summary: EPA does not object to the proposed action.

Dated: August 28, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–17334 Filed 8–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6690–4]

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 08/20/07 Through 08/24/07 Pursuant to 40 CFR 1506.9.

Emergency Comments:

EIS No. 20070367, Draft EIS, AFS, 00, National Forest System Land Management Planning, Implementation, Proposed Land Management Planning Rule at 36 CFR Part 219 to Finish Rulemaking, *Comment Period Ends:* 10/22/2007, *Contact:* Dave Sire 202–205–1006

EIS No. 20070368, Draft Supplement, BLM, NV, Newmont Gold Mining, South Operations Area Project Amendment, Updated Information on the Cumulative Effects Analyses, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV, *Comment Period Ends:* 10/31/2007, *Contact:* Deb McFarlane 775–753–0200

EIS No. 20070369, Draft Supplement, BLM, NV, Leeville Mining Project, Propose to Develop and Operate an Underground Mine and Ancillary Facilities including Dewatering Operation, Updated Information on the Cumulative Effects Analyses,Plan-of-Operations/Right-of-Way Permit and COE Section 404 Permit, Elko and Eureka Counties, NV, *Comment Period Ends:* 10/31/2007, *Contact:* Deb Farlane 775–753–0200

EIS No. 20070370, Draft EIS, AFS, 00, Sage Steppe Ecosystem Restoration Strategy, Implementation, Modoc National Forest, Modoc, Lassen, Shasta Counties, CA and Washoe County, NV, *Comment Period Ends:* 10/15/2007, *Contact:* Rob Jeffus 530–233–8816

EIS No. 20070371, Final EIS, BLM, WY, Eagle Butte West Coal Lease Application, Issuance of Lease for a Tract of Federal Coal, Wyoming Powder River Basin, Campbell County, WY, *Wait Period Ends:* 10/01/2007, *Contact:* Nancy Doelger 307–261–7627

EIS No. 20070372, Draft EIS, BLM, 00, Alabama and Mississippi Resource Management Plan, Analyzes Management Alternatives for the Public Land and Resources, in Portions of the States of Alabama and Mississippi, *Comment Period Ends:* 11/29/2007, *Contact:* Gary Taylor 601–977–5413

EIS No. 20070373, Draft EIS, RUS, WY, Dry Fork Station and Hughes Transmission Line, Construct Electric Generating Facilities, Campbell and Sheridan Counties, Wy, *Comment Period Ends:* 10/15/2007, *Contact:* Richard Fristik 202–720–5093

Amended Notices

EIS No. 20070296, Draft EIS, AFS, CA, Eldorado National Forest Public Wheeled Motorized Travel Management Project, Proposes to Regulate Unmanaged Public Wheeled Motor Vehicle, Implementation, Alphine, Amador, El Dorado and Placer Counties, CA, *Comment Period Ends:* 10/18/2007, *Contact:* Laura Hierholzer 530–642–5187 Revision of FR Notice Published 07/20/2007: Extending Comment Period from 09/04/2007 to 10/18/2007

EIS No. 20070306, Draft EIS, NPS, CO, Curecanti National Recreation Area Resource Protection Study, Gunnison and Montrose Counties, CO, *Comment Period Ends:* 10/19/2007, *Contact:* Roxanne Runkle 303–969–2377 Revision to FR Notice Published 07/20/2007: Correction to Title

EIS No. 20070359, Draft Supplement, BLM, AK, Northeast National Petroleum Reserve-Alaska Integrated Activity Plan, Updated Information, addressing the need for more Oil and Gas Production through Leasing Lands, Consideration of 4 Alternatives, North Slope Borough, AK, *Comment Period Ends:* 10/23/2007, *Contact:* Jim Ducker 907–271–3130 Revision of FR Notice Published 08/24/2007: Correction to Comment Period from 10/09/2007 to 10/23/2007

Dated: August 28, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–17336 Filed 8–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6690–6]

Notice of Intent: Intent To Prepare a Supplemental Environmental Impact Statement (EIS) for the Red Dog Mine Extension—Aqqaluk Project in Northwestern Alaska

AGENCY: U.S. Environmental Protection Agency.

Purpose: In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA), EPA, as the lead federal agency, has identified a need to prepare a supplemental EIS and therefore issues this Notice of Intent in accordance with 40 CFR 1501.7.

For a copy of the scoping document and to be placed on the project mailing list contact: Patty McGrath, Project Manager, Office of Water and Watersheds (OWW–135), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–0979, Fax: (206) 553–0165, E-mail: *mcgrath.patricia@epa.gov.*

SUMMARY: The Red Dog Mine is an operating mine located in northwestern Alaska, approximately 82 miles north of Kotzebue. The mine is operated by Teck Cominco Alaska Incorporated (TCAK) under an Operating Agreement with the NANA Regional Corporation, the landowner. The Red Dog Mine includes an open pit lead-zinc mine, mill, tailings impoundment, waste rock storage areas, and support facilities. Lead and zinc concentrates are trucked 52 miles from the mine site to the DeLong Mountain Regional Transportation System port facility located on the Chukchi Sea. Nineteen miles of the road passes through Cape Krusenstern National Monument. The mine has been operating since 1989. TCAK has proposed to begin mining, by 2010, the Aqqaluk deposit which is an extension of the existing mine. TCAK proposes to use the existing mill, tailings impoundment, support facilities, road, and port site. The Aqqaluk deposit would extend the life of the Red Dog Mine to approximately 2031.

The Red Dog Mine project was evaluated in a previous EIS that was issued in 1984. Permits by the applicable state and federal regulatory programs were issued and the mine proceeded to development and operations. The 1984 EIS did not evaluate impacts from mining the Aqqaluk deposit, therefore EPA determined that a supplemental EIS will be prepared for the Aqqaluk proposal. In addition the supplemental EIS will discuss whether significant impacts or changes occurred that were not anticipated in the 1984 EIS.

The administrative actions that the supplemental EIS must address include modifying an existing EPA Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) new source permit for the mine site and issuing a U.S. Army Corps of Engineers CWA Section 404 permit. The U.S. Army Corps of Engineers, the National Park Service, the State of Alaska Department of Natural Resources, the Northwest Arctic Borough, and nine tribal governments (Buckland, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, Shungnak) are participating as cooperating agencies in the NEPA process. The Maniilaq Association, a tribal consortium that provides health, social, and tribal services to the region, will represent the nine tribal governments throughout the NEPA process.

Alternatives: The supplemental EIS will evaluate the ''no action'' alternative. Additional alternatives will be developed in response to issues raised during the scoping process. For example, there may be waste rock and tailings disposal alternatives, water management alternatives, and/or mine closure alternatives that will be evaluated.

Scoping: The public scoping period begins with the publication of this Notice and concludes October 15, 2007. EPA invites Federal agencies, Native Tribes, State and local governments, and members of the public to comment on the scope of the supplemental EIS. Scoping meetings for the purpose of identifying issues to be evaluated in the supplemental EIS will be held in Anchorage on October 2, in Kotzebue on October 3, in Noatak on October 4, and in Kivalina on October 5. The exact locations and times of the meetings will be announced in local papers. The public is invited to attend and identify issues that should be addressed in the SEIS. A scoping document that explains in greater detail the project and alternatives identified at this time will be sent to known interested parties. The public can obtain a copy of the scoping document at the project Web site, *www.reddogseis.com*, or by contacting Patty McGrath at the phone number, e-mail address, and mailing address listed above in this notice.

How to Comment: EPA invites public comment on the proposed scope of this supplemental EIS. Comments may be submitted by mail, electronic mail, or fax, to Patty McGrath at the contact information above, by close of business October 15, 2007.

Estimated Date of EIS Release: Summer 2008.

Responsible Official: Elin D. Miller, Regional Administrator.

Dated: August 27, 2007.

Anne Norton Miller,

Director, Office of Federal Activities.

[FR Doc. E7–17306 Filed 8–30–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 21, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 30, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1042.

Title: Request for Technical Support—Help Request Form.

Form No.: N/A—electronic format only.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 36,300 respondents; 36,300 responses.

Estimated Time Per Response: 8 minutes.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 4,840 hours.

Annual Cost Burden: $387,200.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in the estimated number of respondents or burden hours.

The FCC's Wireless Telecommunications Bureau (WTB) maintains Internet software used by the public to apply for licenses, participate in auctions for spectrum, and maintains license information. In this mission, WTB has a ''help desk'' that answers questions related to these systems as well as well as resetting and/or issuing user passwords for access to these systems. The form currently is available on the Web site *https://esupport.fcc.gov/request.htm* under OMB Control Number 3060–1042. This form will continue to substantially decrease public and staff burden since all the information needed to facilitate a support request will be submitted in a standard format but be available to a wider audience. This eliminates or at least minimizes the need to follow-up with the customers to obtain all the information necessary to respond to their request. This electronic form also helps resort requests into previously defined categories to all staff to respond more quickly.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7–17327 Filed 8–30–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to the Office of Management and Budget, Comments Requested

August 22, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 30, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith

B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0626.

Title: Section 90.483, Permissible Methods and Requirements of Interconnecting Private and Public Systems of Communication.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this revision to the OMB after this 60-day comment period to obtain the full three-year clearance from them.

The Commission has eliminated two rule sections from this information collection. They are Sections 90.168 and 90.425. This leaves Section 90.483 as the only remaining rule section under this OMB Control Number which is 3060–0626. Rule section 90.168 is accounted for under OMB Control Number 3060–0076 and section 90.425 is accounted for under OMB Control Number 3060–0599.

Section 90.483 requires when a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without this equipment if they have obtained the consent of all co-channel licensees located within a 120 kilometer (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment (reporting and third party disclosure requirements).

The information is used by Commission staff in carrying out its duties under the Communications Act. Without this information, the Commission would not be able to carry out its statutory responsibilities. This information is necessary to ensure that licensees comply with the Commission's technical and operational duties.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7–17329 Filed 8–30–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bank of Montreal, Montreal, Canada, Harris Financial Corp., and Harris Bankcorp, Inc., both of Chicago, Illinois; to acquire 100 percent of the voting shares of Ozaukee Bank, Cedarburg, Wisconsin.

2. Bank of Montreal, Montreal, Canada; Harris Financial Corp.; and Harris Bankcorp, Inc., both of Chicago, Illinois; to acquire 100 percent of the voting shares of Merchants and Manufacturers Bancorporation, Inc., New Berlin, Wisconsin; Merchants Merger Corp., and Merchants New Merger Corp., both of Brookfield, Wisconsin; and thereby indirectly acquire Lincoln State Bank, Milwaukee, Wisconsin; Grafton State Bank, Grafton, Wisconsin; Community Bank Financial, Oconto Falls, Wisconsin; The Reedsburg Bank, Reedsburg, Wisconsin; Fortress Bank, Westby, Wisconsin; Fortress Bank of Cresco, Cresco, Iowa; Wisconsin State Bank, Random Lake, Wisconsin; and 5.89 percent of the voting shares of Central Wisconsin Financial Services, Inc., and thereby indirectly acquire voting shares of Bank of Wausau, both of Wausau, Wisconsin.

Board of Governors of the Federal Reserve System, August 28, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–17313 Filed 8–30–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–07AL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit—NEW—Division for Heart Disease and Stroke Prevention (DHDSP), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under Part C (Centers for Disease Control and Prevention) of the

Statement of Organization Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 72842–72843, dated December 7, 2005), the Division for Heart Disease and Stroke Prevention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention was established. This Division plans, directs, and coordinates programs to reduce morbidity, risk factors, costs, disability, mortality, and disparities associated with heart disease, stroke, and other cardiovascular disease outcomes. Under this Division, formative research was conducted to identify effective interventions and promising practices for preventing heart disease and stroke at the work site. In 2005, this research resulted in the development of a *Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit.* The toolkit provides state programs with suggestions about which health benefits, services, and interventions can improve employee cardiovascular health, prevent heart disease and stroke, and reduce related costs. The second phase of this project focuses on disseminating and evaluating the *Successful Business Strategies to Prevent Heart Disease and Stroke Toolkit.*

As part of the Toolkit evaluation, the CDC has employed contractor support to design and conduct a Web-based survey of State Health Departments to gather information on their experiences with the Toolkit. The contractor will collect and analyze all data from this survey. The CDC has also contracted to make revisions to the toolkit based on results of this survey, ongoing feedback from the States, and feedback from employers through interviews.

There are no costs to respondents except their time to complete the survey. The total estimated annualized burden hours are 26.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Web-based survey on CVH Toolkit.	State Heart Disease and Stroke Programs.	51	1	30/60	26

Dated: August 23, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–17293 Filed 8–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10249 and CMS–10120]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* New Collection; *Title of Information Collection:* Administrative Requirements for section 6071 of the Deficit Reduction Act of 2005 (DRA); *Use:* CMS will use an Operational Protocol Instruction Guide and template for the development of Operational Protocols for the States selected to participate in the Money Follows the Person (MFP) Rebalancing Demonstration. The guide will provide instruction on the required elements of the State's Operational Protocol, which must be submitted and approved before a State may enroll individuals in the State's demonstration program or begin to claim service dollars. The DRA Section 6071(c)(9) requires the States to provide information and assurances that total expenditures under the State Medicaid program for home and community-based long-term care services will not be less for any fiscal year during the MFP demonstration project than for the greater of such expenditures for fiscal year 2005 or any succeeding fiscal year before the first of the year of the MFP demonstration project. Accordingly, States are required to submit Maintenance of Effort (MOE) forms and MFP Budget forms on an annual basis. Additionally, in order to receive enhanced FMAP, States are required to submit the MFP Demonstration Financial Forms on a quarterly basis. Section 6071(g) of the DRA requires a national evaluation of the MFP demonstration project and a final report to the President and Congress. For the national evaluation, States will be required to submit semi-annual reports that describe their progress in implementing their MFP programs and rebalancing their long-term care systems. In addition, States will be required to submit on a quarterly basis an MFP Finders File, which will include eligibility records for all MFP participants, and an MFP Services File, which will include records for each service funded with MFP grant funds. *Form Number:* CMS–10249 (OMB#: 0938–NEW); *Frequency:* Reporting—Yearly, Quarterly, Semi-annually and Once; *Affected Public:* States, Local or Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 229.4; *Total Annual Hours:* 7,843.

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* 1932 State Plan Amendment Template, State Plan Requirements and Supporting Regulations in 42 CFR 438.50; *Form No.:* CMS–10120 (OMB# 0938–0933); *Use:* The State Medicaid Agencies will complete the template. CMS will review the information to determine if the State has met all the requirements under 1932(1)(1)(A) and 42 CFR 438.50. Once all requirements are met, the State will be allowed to enroll Medicaid

beneficiaries on a mandatory basis into managed care entities without section 1115 or 1915(b) waiver authority; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 100.

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 October 30, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—A, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 24, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–17351 Filed 8–30–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Award of Non-Competitive Grant

AGENCY: Administration on Children, Youth, and Families (ACYF), ACF, DHHS.

ACTION: Notice.

CFDA No.: 93.010, Community-Based Abstinence Education.

Legislative Authority: Title XI, Section 1110 of the Social Security Act.

Amount of Award: $2,500,000.

Project Period: September 30, 2007–March 30, 2009 (18 months).

J*ustification for the Exception to Competition:* ACYF will award service grant funds without competition to the Prevention Research Center at the University of Texas Health Science Center at Houston to build on a longitudinal study they are currently conducting of adolescent pregnancy approaches. They are the only research group currently conducting a study of size and scope that provides for access to schools and study participants for the collection of additional data needed. Building on the existing study already underway saves the cost of initiating a study from the ground up.

FOR FURTHER INFORMATION CONTACT: Stan Koutstaal, Ph.D., Director, Division of Abstinence Education, Family and Youth Services Bureau, ACYF, ACF, DHHS. Portals Building, Suite 800, 1250 Maryland Avenue, SW., Washington, DC 20024; 202–401–6959.

Dated: August 24, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. E7–17216 Filed 8–30–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0325]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

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 information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the collection ''Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.''

DATES: Submit written or electronic comments on the collection of information by October 30, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. 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 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.

Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use—Section 502 of the Federal Food, Drug and Cosmetic Act/Section 351 of the Public Health Service Act (OMB Control Number 0910–0553)—Extension

Section 502 of the Federal Food, Drug and Cosmetic Act (FFD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.

In the **Federal Register** of November 30, 2004 (69 FR 69606), FDA published a notice of availability of the guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' The guidance document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA's labeling requirements for IVDs and (2) FDA's labeling requirements for biologics, including IVDs under 21 CFR parts 610 and 660. Under section 502(c) of the FFD&C Act, a drug or device is misbranded, ''If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information will help to ensure that IVD users will have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the act and section 351 of the PHS Act.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 502 of the FFD&C Act/Section 351 of the PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	1,742	1	1,742	4	6,968[2]
Educational Outreach	1,742	1	1,742	6	27,872
Total					34,840

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time burden.

The glossary and educational outreach activities are inclusive of both domestic and foreign IVD manufacturers. The Center for Devices and Radiological Health's ''Information Retrieval System's Registration and Listing Information'' database listed the total number of IVD manufacturers as 1,742. From this total, 1,206 of the IVD manufacturers were listed as domestic and 536 were listed as foreign manufacturers. Consequently, FDA has based its burden estimate on the maximum possible number of manufacturers choosing to implement the use of symbols in labeling. The number of hours per response for the glossary and educational outreach activities were derived from consultation with a trade association and FDA personnel. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for the specific symbols used in labels or labeling for the IVDs manufactured. The 16-hour estimate for educational outreach is inclusive of activities manufacturers used to educate the various professional users of IVDs regarding the meaning of the IVD symbols. Further, this estimate is based on FDA's expectation that IVD manufacturers will jointly sponsor many more educational outreach activities.

Dated: August 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–17217 Filed 8–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0330]

Presidential Interagency Working Group on Import Safety; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Interagency Working Group on Import Safety (Working Group) is announcing a public meeting to identify actions the public and private sectors can take to promote the safety of products imported into the United States. The Working Group was created by the Executive order on July 18, 2007.

DATES: The public meeting will be held on October 1, 2007, from 8 a.m. to 6 p.m. Persons interested in attending the meeting in person or by teleconference must register by September 17, 2007. See section III.B of the **SUPPLEMENTARY INFORMATION** section of this document for details on how to register. Submit written or electronic comments by October 1, 2007.

ADDRESSES: The public meeting will be held in the Jefferson Auditorium, U.S. Department of Agriculture, 1400 Independence Ave., SW., South Bldg., Washington, DC 20090. The public may

also attend or present at the meeting by teleconference (audio bridge).

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: For information regarding the meeting or this notice: Erik Mettler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *erik.mettler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Working Group was established by Executive Order 13439 on July 18, 2007, to conduct a comprehensive review of current import safety practices and determine where improvements can be made. The Working Group, chaired by the Department of Health and Human Services' Secretary Michael O. Leavitt, is comprised of officials from the Department of Health and Human Services; the Department of State; the Department of the Treasury; the Department of Justice; the Department of Agriculture; the Department of Commerce; the Department of Transportation; the Department of Homeland Security; the Office of Management and Budget; the Office of the United States Trade Representative; the Environmental Protection Agency; and the Consumer Product Safety Commission.

The mission of the Working Group is to identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products, including the following:

(1) Reviewing or assessing current procedures and methods aimed at ensuring the safety of products exported to the United States; these current procedures and methods include: Reviewing existing cooperation with foreign governments, foreign manufacturers, and others in the exporting country's private sector regarding their inspection and certification of exported goods and factories producing exported goods; and considering whether additional initiatives should be undertaken with respect to exporting countries or companies;

(2) Identifying potential means to promote all appropriate steps by U.S. importers to enhance the safety of imported products, including identifying best practices by U.S. importers in selection of foreign manufacturers, inspecting manufacturing facilities, inspecting goods produced on their behalf either before export or before distribution in the United States, identifying origin of products, and safeguarding the supply chain; and

(3) Surveying authorities and practices of Federal, State, and local government agencies regarding the safety of imports to identify best practices and enhance coordination among agencies.

The Working Group plans to release a Strategic Framework to promote import safety and deliver this report to the President by the September 17, 2007, due date (see **DATES**). The Working Group plans to release a followup Action Plan by mid-November 2007. This Action Plan will take into consideration the feedback received from the public, and recommend specific actions the Federal Government and all parties involved can take to enhance import safety on all levels.

II. Purpose of the Public Meeting

The objective of the Import Safety public meeting, to be held on October 1, 2007, is to identify and recommend actions that persons involved in the production, distribution, importation, regulation, and use of imported products, including government, industry, and consumers can take to promote the safety of such products.

To help achieve this objective, the Working Group would like public comments to address the following questions:

1. What are the key challenges for industry, consumers, and foreign, State and local governments to ensure the safety of products imported into the United States?

2. Consistent with the Strategic Framework, the Working Group will recommend to the President by September 17, 2007, what actions should persons involved in the production, distribution, importation, regulation, and use of imported products, including Federal, State, local and foreign governments, manufacturers, distributors, brokers, importers, and consumers take, individually or jointly, to promote the safety of imported products? What should the Federal government and others do to implement or facilitate the implementation of these actions?

3. For each action, what is the benefit(s) of implementing this recommendation? What is the cost(s) of implementing this recommendation? What challenge(s) does it address? Are there other actions that must or should be taken first before implementing this recommendation?

III. What Information Should You Know About the Meeting?

A. When and Where Will the Meeting Occur? What Format Will We Use?

Through this document, we are announcing the convening of a public meeting to hear recommendations on actions that can be taken to promote import safety. Representatives from member Departments of the Working Group will preside over the meeting.

We will conduct the meeting on October 1, 2007, in the Jefferson Auditorium (see **ADDRESSES**). The meeting format will include presentations by persons registered to speak.

B. How Do You Register for the Meeting or Submit Comments?

If you wish to attend the meeting in person or by teleconference and/or make a presentation at the meeting, send an e-mail message to Erik Mettler (see **FOR FURTHER INFORMATION CONTACT**) by close of business on September 17, 2007. Your e-mail should include the following information: Name, company, company address, company telephone number, e-mail address, whether you will attend the meeting in person or by teleconference, and whether you wish to speak at the meeting. We will send you a confirmation within 2 business days after we receive your registration request. Registration is free and will be on a first-come, first-serve basis.

We also will accept walk-in registration at the meeting site, but space is limited, and we will close registration when maximum seating capacity (approximately 500) is reached.

We will try to accommodate all persons who wish to speak. The time allotted for presentations may depend on the number of persons who wish to speak. Individuals will be able to make a presentation at the meeting either in person or by teleconference.

Additionally, regardless of whether you wish to make a presentation or simply attend the meeting, contact Erik Mettler (see **FOR FURTHER INFORMATION CONTACT**) if you need any special accommodations (such as wheelchair access or a sign language interpreter).

If you would like to submit electronic or written comments, please send your comments to the Division of Dockets

Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Written or electronic comments must be received no later than (see **DATES**).

C. Will Meeting Transcripts Be Available?

We will prepare a meeting transcript and make it available on FDA's Web site (*http://www.fda.gov/ohrms/dockets*) after the meeting. We anticipate that transcripts will be available approximately 21 business days after the meeting. The transcript will also be available for public examination at the Division of Dockets Management (see **ADDRESSES**).

Dated: August 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–17305 Filed 8–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; National Physician Survey of Practices on Diet, Physical Activity, and Weight Control

SUMMARY: Under the provision of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), National Cancer Institute (NCI), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 28, 2007, page 43609 and allowed 60-days for public comment. One public comment was received asking about the possibility of doing studies of autism rather than the proposed survey. The comment was out of the scope of this current project. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Physician Survey of Practices on Diet, Physical Activity, and Weight Control.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: This study will obtain current, national data on primary care physicians' knowledge, attitudes, and practices related to diet, physical activity, and weight control. Obesity, poor diet, and lack of physical activity are becoming recognized as major public health problems in the United States, and have been linked to increased risk, adverse prognosis, and poor quality of life for cancer and many other chronic diseases. The data collected in this study will support and further NCI work in monitoring and evaluating providers' cancer prevention knowledge, attitudes, and practices and their impact on pupulation health, as well as enable monitoring of progress toward major cancer control goals. Data from the survey will be used to profile existing physician practice, understand barriers to counseling and referral, and to inform methods for improving the utilization of these services for adults and children. Two questionnaires, one sent to physicians and one sent to their practice administrators, will be administered by mail or telephone to a randomly-selected national sample of 2,000 physicians belonging to primary care specialties. Study participants will be 2,000 practicing physicians who are family practitioners, general internists, pediatricians, and obstetrician/gynecologists and 2,000 practice administrators.

The annual reporting burden is as follows: *Estimated Number of Respondents:* 4,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .333; and *Estimated Total Annual Burden Hours, Requested:* 1,332. The annualized cost to respondents is estimated at: $65,048. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondent	Estimated number respondents	Estimated number responses per respondent	Average burden hours per response	Estimated total annual burden hours
Physician	2,000	1	0.333	666
Medical Practice Administrator	2,000	1	0.333	666
Total	4,000	1		1,332

* Hourly earnings data are taken from the National Compensation Survey: Occupational Wages in the United States, June 2005, U.S. Department of Labor, U.S. Bureau of Labor Statistics.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Send comments to Ashley Wilder Smith, Ph.D., M.P.H., Health Sciences Specialist, National Cancer Institute, 6130 Executive Blvd., MSC 7344, Executive Plaza North, Room 4090, Bethesda, MD 20892–7344. Telephone: 301–451–1843; E-mail: *smithas@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of

this publication should be received by September 26, 2007.

Dated: August 21, 2007.

Ashley Wilder Smith,

National Cancer Institute Task Order Monitor, National Institutes of Health.

[FR Doc. 07–4270 Filed 8–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Causes and Effects of Delirium.

Date: September 27–28, 2007.

Time: 5 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. *haddenw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4268 Filed 8–30–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Methamphetamine Use Prevention Initiative—NEW

Prevention of Methamphetamine Abuse grants are authorized under section 519E of the Public Health Service Act, as amended. This program addresses the growing problem of methamphetamine abuse and addiction by assisting localities to expand prevention interventions that are effective and evidence-based and/or to increase capacity through infrastructure development. According to the 2005 National Survey on Drug Use and Health, 10.4 million Americans age 12 and older had tried methamphetamine at least once in their lifetime. In addition, the number of methamphetamine users who were dependent on or abused some kind of illicit drug rose significantly from 164,000 in 2002 to 257,000 in 2005. The goal of the Methamphetamine Abuse Prevention grants is to intervene effectively to prevent, reduce, or delay the use and/or spread of methamphetamine abuse.

Proposed Methamphetamine Prevention and Abuse grants will focus on conducting community-based prevention programs targeting those populations within the community that are most at risk for methamphetamine abuse and addiction. In addition, grants may be used for assisting local government entities to conduct appropriate methamphetamine prevention activities in rural and urban areas that are experiencing increases in methamphetamine abuse and addiction. This can be documented by local and specific epidemiological, health service use, judicial and/or environmental data. Activities may include: training and educating state and local law enforcement officials, prevention and education officials, members of community anti-drug coalitions, and parents on the signs of methamphetamine abuse and addiction and the options for prevention; planning, administration, and educational activities related to the prevention of methamphetamine abuse and addiction; monitoring and evaluating of methamphetamine prevention activities, and reporting and disseminating resulting information to the public; or conducting and evaluating targeted pilot programs.

The grantees will be collecting data on Office of Management and Budget (OMB) No. 0930–0230 approved National Outcomes Measures (NOMs) and program specific questions on youth and adult methamphetamine use. There are two questionnaire forms: one for adults ages 18 and older and another for youths under the age of 18. The adult and youth questionnaires contain 40 and 42 questions, respectively, with the first 12 questions covering the OMB approved NOMs questions. The focus areas for the adult questionnaires comprise attitudes toward tobacco, alcohol, and other substances; attitudes and experiences; family relationships, relationships with those around you; future goals; thoughts, beliefs, and experiences related to methamphetamines; and thoughts on possible effects of methamphetamine use. The youth survey focus areas include: general information; attitudes toward tobacco, alcohol, and other substances; attitudes and experiences; family relationships; school experiences; perceived probability to try substances; where they receive substance abuse information; thoughts, beliefs, and experiences relating to methamphetamine; effects of methamphetamine use; and how comfortable they were with answering the survey questions. Additional non-

methamphetamine-related questions are included to identify risk and protective factors for methamphetamine. These questions identify demographic information which will be useful in categorizing results. Some program specific questions were suggested and agreed upon by the grantees in the review of the questionnaire.

All applicants must describe their evaluation plans in their applications, and funded grantees are required to conduct an evaluation of their projects. The evaluation should be designed to provide regular feedback in order to facilitate project improvements. The evaluation must include both process and outcome components which must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. Applicants must consider their evaluation plans when preparing the project budget. The grantees will collect data from program participants at three time periods: baseline, exit, and 6-month follow-up. Each methamphetamine grantee will collect program specific questions in addition to NOM questions. Similar to the submission process for the Government Performance and Results Act (GPRA), grantees will submit their NOM-Meth data to their respective program Project Officers as well as to the Center for Substance Abuse Prevention's (CSAP) Data Coordination and Consolidation Center (DCCC) two times per year. The OMB approved NOMs incorporate the GPRA measures for reporting and are approved for all PRNS. DCCC will be responsible for data collection and analysis across grantee sites, while individual grantees will be responsible for their own analyses.

The burden is greatly reduced by the fact that the data collection process can be conducted by submitting electronic files. In many cases, some programs can collect all data online. The SAMHSA Prevention Platform has publicly available online data collection and reporting tools such as the database builder, which can be used to meet these reporting requirements. Other tools are under development. CSAP is currently developing a web-based data entry tool that will assist grantees in submitting their data electronically. This data entry tool will reduce the burden on those grantees that do not yet have the capacity to submit large batch files. The DCCC will use this data for secondary analysis that will aid CSAP in responding to GPRA, Office of National Drug Control Policy as well as other federal reporting requirements.

Description	Number of respondents	Responses per respondent	Hours per response	Total
Provider survey	10,000	1	.36	3600
Exiting survey	10,000	1	.36	3600
6-month follow-up survey	7,000	1	.36	2520
Total	27,000	3	1.08	9720

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: August 14, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–17277 Filed 8–30–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1708–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1708–DR), dated June 11, 2007, and related determinations.

EFFECTIVE DATE: August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Lee H. Rosenberg as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17315 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1706–DR]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1706–DR), dated June 6, 2007, and related determinations.

EFFECTIVE DATE: August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Lee H. Rosenberg as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17314 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1714–DR]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1714–DR), dated July 24, 2007 and related determinations.

EFFECTIVE DATE: August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Lee H. Rosenberg as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17316 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3277–EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3277–EM), dated August 18, 2007, and related determinations.

EFFECTIVE DATE: August 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 18, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Texas resulting from Hurricane Dean beginning on August 17, 2007, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Texas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth Clark, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Aransas, Bee, Bexar, Brazoria, Brooks, Calhoun, Cameron, Chambers, Dallas, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jim Wells, Kenedy, Live Oak, Kleberg, Matagorda, McLennan, Nacogdoches, Nueces, Refugio, San Patricio, Smith, Tarrant, Travis, Victoria, Walker, Wharton, and Willacy Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17317 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

EFFECTIVE DATE: August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Atascosa, Liberty, Refugio, San Patricio, Taylor, and Upshur Counties for Individual Assistance.

Atascosa, Delta, Edwards, Ellis, Jim Hogg, Real, Refugio, Shackelford, Upshur, and Uvalde Counties for Public Assistance, including direct Federal assistance.

Henderson, Hood, and Zavala Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17318 Filed 8–30–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW155132]

Notice of Availability (NOA) of the Eagle Butte West Coal Lease-by-Application Final Environmental Impact Statement (FEIS), Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability (NOA) of a final environmental impact statement. (FEIS) for coal lease by application (LBA) WYW155132 in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Under the provisions of the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) announces the availability of the Eagle Butte West Coal Lease Application FEIS. The tract is being considered for sale as a result of a coal lease application received from the operator of the adjacent Eagle Butte Mine in Campbell County, Wyoming.

DATES: The FEIS will be available for a 30 calendar-day review period effective the date that the Environmental Protection Agency (EPA) publishes their NOA of the FEIS in the **Federal Register**.

ADDRESSES: The FEIS is available on the internet at *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/Eagle Butte West.html.* Copies are available at the following BLM offices:

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604.

Written comments may be submitted to: Bureau of Land Management, Casper Field Office, Attn: Nancy Doelger at the address listed above. The public may submit comments electronically to the attention of Nancy Doelger at *casper_wymail@blm.gov* or fax comments to (307) 261–7587. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the BLM Casper Field Office address above or telephone (307) 361–7600.

SUPPLEMENTARY INFORMATION: The FEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease in the Wyoming portion of the Powder River Basin. The BLM is considering a coal lease issuance as a result of a December 28, 2001, application submitted by RAG Coal West, Inc. (RAG) to lease Federal coal near the Eagle Butte Mine, approximately 3 miles north of Gillette, Wyoming. RAG sold the Eagle Butte Mine to Foundation Coal West, Inc. in August 2004.

The applicant proposes to lease the tract as a maintenance tract to extend the life of their existing mining operations at the Eagle Butte Mine under the provisions of the Leasing on Application regulations at 43 CFR 3425. This tract, case number WYW155132, is referred to as the Eagle Butte West Coal Tract.

The following lands in Campbell County, Wyoming are included in the tract as applied for:

T. 51 N., R. 72 W., 6th P.M., Wyoming.
Section 19: lots 13, 14, 19, and 20;
Section 20: lots 10 (S½), 11 (S½), and 12 through 15;
Section 29: lots 1 (W½), 2 through 7, 8 (W½ and SE¼), and 9 through 16;
Section 30: lots 5, 6, 11 through 14, 19 and 20.

Containing 1,397.64 acres more or less.

Foundation estimates that approximately 238 million tons of Federal coal are included in the tract as applied for.

The Office of Surface Mining Reclamation and Enforcement (OSM), the Land Quality and Air Quality Divisions of the Wyoming Department of Environmental Quality (WDEQ), the Wyoming Department of Transportation (WDOT), the Wyoming State Planning Office (WSPO), and the Campbell County Board of Commissioners are cooperating agencies in the preparation of the FEIS. If the tract is leased as a maintenance tract, the new lease will be incorporated into the existing mining and reclamation plan for the adjacent mine. The Secretary of the Interior (Secretary) must approve the revision to the Mineral Leasing Act (MLA) mining plan before the Federal coal can be mined. If the tract is leased, OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary. WDEQ has entered into a cooperative agreement with the Secretary to regulate

surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WSPO coordinates planning within state agencies and facilitates collaboration among the agencies, the Federal government, other states, the private sector, and the general public.

On May 2, 2005, the BLM published a Notice of Intent (NOI) to prepare an EIS for the Eagle Butte West coal lease application in the **Federal Register**. A notice announcing the availability of the Draft EIS was published in the **Federal Register** by the EPA on October 20, 2006. A 60-day comment period on the Draft EIS commenced with publication of the EPA's notice of availability and ended on December 19, 2006. The BLM published a Notice of Availability and Notice of Public Hearing in the **Federal Register** on October 20, 2006. The BLM's **Federal Register** notice announced the date and time of a public hearing, which was held on November 14, 2006, in Gillette, Wyoming. The purpose of the hearing was to solicit comments on the DEIS, fair market value, and the maximum economic recovery of the Federal coal. During the DEIS comment period, the BLM received eight written comments, which are included, with BLM's responses, in an appendix to the FEIS.

The FEIS analyzes leasing the above-described tract as applied for as a separate Proposed Action. Under this alternative, a competitive sale would be held and a lease issued for Federal coal in the tract as it was applied for. As part of the coal leasing process, the BLM identified a different tract configuration that would potentially avoid bypassing coal or prompt competitive interest in the unleased Federal coal in this area. The tract configuration that the BLM has identified is described and analyzed as a separate alternative in the FEIS. Under this alternative, a competitive sale would be held and a lease issued for Federal coal lands included in a tract modified by the BLM. The FEIS also analyzes the alternative of rejecting the application to lease Federal coal as the No Action Alternative. The Proposed Action and Alternatives being considered in the FEIS are in conformance with the ''Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office.'' (April 2001).

A Record of Decision (ROD) will be prepared after the close of the 30-day review period for the FEIS. Comments received on the FEIS will be considered during preparation of the ROD.

Robert A. Bennett,

State Director.

[FR Doc. E7–17332 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1430–HN; GP7–0188]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: Thursday, September 20, 2007 at the Holiday Inn Express, 1620 Canyon Rd., Ellensburg, WA 98926.

SUPPLEMENTARY INFORMATION: The meeting will start at 1:30 p.m., end at approximately 3 p.m., and be open to the public. Discussion will focus on the potential development of wind energy facilities on public lands. There will be an opportunity for public comments at 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Pavey or Sandie Gourdin, BLM, Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200.

Dated: August 27, 2007.

Richard Bailey,

Acting District Manager.

[FR Doc. E7–17291 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–07–1150–PH–24–1A]

Cancellation of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Cancellation of Utah Resource Advisory Council (RAC) Meeting.

DATES: September 14, 2007, 9 a.m.–5 p.m.

ADDRESSES: Holiday Inn, 838 Westwood Blvd., Price, Utah.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: Five fee proposal business plans (focus of meeting) were to be presented to the RAC. They will not be ready for presentation by the proposed September 14 meeting date. Therefore, the meeting is being cancelled.

Dated: August 27, 2007.

Selma Sierra,

State Director.

[FR Doc. E7–17300 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820 XZ]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Oct. 4 and 5, 2007, at the BLM Surprise Field Office, 602 Cressler St., Cedarville, Calif. On Oct. 4, members will convene at 9 a.m. and depart for a field tour to lands within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area. On Oct. 5, the council will convene a business meeting at 8 a.m. in the meeting room at Bruno's, 445 Main St., Gerlach, Nevada. Public comments will be taken at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Office manager, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and

the northwest corner of Nevada. At this meeting, agenda topics will include an update on the Sagebrush Steppe Ecosystem Restoration Project, a status report on sage grouse conservation strategies, an update on the resource management plan protest process, a status report on wind energy proposals and information on current issues in the BLM's Wild Horse and Burro Program. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: August 27, 2007.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E7–17363 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–210–5410–FR–A508; AZA–33808 and AZ–210–5410–FR–A508; AZA–33809]

Correction to Notice of Realty Action: Applications for Conveyance of Federal Mineral Interests, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice amends the Notice of Realty Action for 2 Applications for the Conveyance of Federal Mineral Interest, Maricopa County, Arizona, published in 72 FR 46497–46498. Under the sections entitled **SUPPLEMENTARY INFORMATION**, the following corrections are made. The lands proposed for purchase and conveyance of the Federally-owned mineral interest is changed to:

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 4 N., R. 2 W.,
Sec. 10, SE¼; Sec. 11, NW¼SW¼, SW¼NE¼SW¼, E½NE¼SW¼; Sec. 14, E½NE¼NW¼, NE¼NW¼SW¼.

The area described contains 260 acres more or less, in Maricopa County.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 4 N., R. 2 W.,
Sec. 14, NW¼ NW¼.

The area described contains 40 acres more or less, in Maricopa County.

Dated: August 23, 2007.

Teresa A. Raml,

Phoenix District Manager.

[FR Doc. E7–17307 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0114).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart A, General, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 1, 2007.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0114). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to email your comments to MMS, the address is: *rules.comments@mms.gov.* Reference Information Collection 1010–0114 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart A, General.

Forms: MMS–132, MMS–1123, MMS–1832.

OMB Control Number: 1010–0114.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

Regulations implementing these responsibilities are under 30 CFR part 250, subpart A, General. This request also covers the related Notices to Lessees and Operators (NTLs) that MMS issues to clarify and provide additional guidance on some aspects of our regulations. Responses are mandatory. No questions of a ''sensitive'' nature are asked. We protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and 30 CFR 250.197, ''Data and

information to be made available to the public or for limited inspection.''

The MMS uses the information collected under the Subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

• Review records of formal crane operator training, rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The MMS also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.

• Review welding, burning, and hot tapping plans, procedures, and records to ensure that these activities are conducted in a safe and workmanlike manner by trained and experienced personnel.

• Provide lessees greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.

• Determine the capability of a well to produce oil or gas in paying quantities or to determine the possible need for additional wells resulting in minimum royalty status on a lease. If a well does not yield hydrocarbons in sufficient quantity to warrant continued operation and production, MMS uses the information to verify the claim and to release the lessee from lease obligations. Conversely, the information is used to extend the term of the lease if additional wells will warrant continued operation and production.

• Ensure that injection of gas promotes conservation of natural resources, prevents waste, and that subsurface storage of natural gas does not unduly interfere with development and production operations under existing leases.

• Ensure the appropriateness of reimbursing lessees for costs incurred in reproducing geological and geophysical (G&G) data and information for submission to MMS and processing or reprocessing G&G information in a form and manner other than that normally used in the conduct of a lessee's business, or to determine the proper reimbursement of costs incurred during inspections.

• Record the designation of an operator authorized to act on behalf of the lessee and to fulfill the lessee's obligations under the OCS Lands Act and implementing regulations, or to record the local agent empowered to receive notices and comply with regulatory orders issued (Form MMS–1123).

• Determine if an application for right-of-use and easement serves the purpose specified in the grant when conducting exploration, development, and production activities or other operations on or off the lease; is maintained for such purposes; and does not unreasonably interfere with the operations of any other lessee.

• Provide for orderly development of leases through the use of information to determine the appropriateness of lessee requests for suspension of operations, including production. For example, MMS needs the information to determine that a suspension is necessary to: (1) Ensure proper lease development, (2) allow time to construct or negotiate use of transportation facilities, (3) allow reasonable time to enter into a sales contract, (4) allow for unavoidable situations, (5) avoid continued operations resulting in premature abandonment of a producing well(s) that would be uneconomic, (6) comply with the National Environmental Policy Act or to conduct an environmental analysis, (7) install equipment for safety and environmental protection, (8) allow time for inordinate delays encountered in obtaining required permits or consents, (9) comply with judicial decrees, or (10) avoid activities that pose a threat of serious, irreparable, or immediate harm.

• Improve safety and environmental protection on the OCS, through collection and analysis of accident reports to ascertain the cause of the accidents and, to determine ways to prevent recurrences.

• Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. This requirement is expanded in the final rule to include reporting when lease production is initiated, resumes before the end of the 180-day period after production ceased, and when leaseholding operations occur during the referenced 180-day interval. The MMS will use this information to efficiently maintain the lessee/operator lease status.

• Approve requests to cancel leases.

• Be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes, to advise the U.S. Coast Guard in case of the need to rescue offshore workers in distress, to monitor damage to offshore platforms and drilling rigs, and to advise the news media and interested public entities when production is shut in and when resumed. The OCS operations produce more than one-quarter of the Nation's natural gas and more than one-sixth of its oil, and it is essential to know when production is interrupted. The Gulf of Mexico Region (GOMR) uses a reporting form for respondents to report evacuation statistics when necessary (Form MMS–132, Evacuation Statistics). It is sent to respondents at the onset of each ''hurricane season'' in the GOMR.

• Allow operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify an operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136. However, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

• Determine that respondents have corrected all Incidents of Non-Compliance (INC)(s) identified during inspections (Form MMS–1832). The MMS issues this form to the operator. The operator then corrects the INC(s) and returns the form to the MMS Regional Supervisor no later than 14 days.

• Review records of crane inspection, testing, maintenance, and crane operator qualifications to ensure that lessees perform operations in a safe and workmanlike manner and maintain equipment in a safe condition.

Frequency: The frequency is ''on occasion'' for most of the requirements in Subpart A. The Form MMS–132 is submitted daily during the period of emergency.

Estimated Number and Description of Respondents: Approximately 1 State and 130 Federal OCS oil and gas or sulphur lessees.

Estimated Hour and Fee Burden: The estimated annual ''hour'' burden for this information collection is a total of 36,239 hours. The following chart details the individual components and estimated hour burdens and fees. In

calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Fee		
		Hour burden	Average No. of annual responses	Annual burden hours
Authority and Definition of Terms				
104; Form MMS–1832	Appeal orders or decisions; appeal INCs	Exempt under 5 CFR 1320.4(a)(2), (c)		0
Performance Standards				
109(a); 110	Submit welding, burning, and hot tapping plans.	2	133 plans	266
115; 116	Request determination of well producibility; submit data & information; notify MMS of test.	5	90 responses	450
118; 119; 121; 124	Apply for injection or subsurface storage of gas.	10	14 applications	140
Subtotal			237 responses	856
Fees				
125	Service Fees	Fees covered individually throughout subpart.		0
Forms				
130–133; Form MMS–1832.	Submit "green" response copy of Form MMS–1832 indicating date violations (INCs) corrected.	2	1,529 forms	3,058
143; 144; 145; Form MMS–1123.	Submit designation of operator (Form MMS–1123—15 mins. only); report change of address; notice of termination; submit designation of local agent.	1	1,470 forms	1,470
			$150 fee x 1,470 = $220,500	
192; Form MMS–132	Daily report of evacuation statistics for natural occurrence/hurricane (Form MMS–132 in the GOMR) when circumstances warrant; inform MMS when you resume production.	1	1,800 reports or forms	1,800
Subtotal			4,799 responses	6,328
			$220,500	
Inspection of Operations				
130–133	Request reconsideration from issuance of an INC.	2	178 requests	356
	Request waiver of 14-day response time.	1	510 waivers	510
	Notify MMS before returning to operations if shut-in.	.5	976 notices	488
133	Request reimbursement for food, quarters, and transportation provided to MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	2	12 requests	24
Subtotal			1,676 responses	1,378
Disqualification				
135 MMS internal process.	Submit PIP under MMS implementing procedures for enforcement actions.	40	4 plans	160
Special Types of Approval				
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1	360 requests	360
141	Request approval to use new or alternative procedures, including BAST not specifically covered elsewhere in regulatory requirements.	20	33 requests	660

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Fee		
		Hour burden	Average No. of annual responses	Annual burden hours
142	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements.	3	62 requests	186
Subtotal			455 responses	1,206
Naming and Identifying Facilities and Wells (Does Not Include MODUs)				
150; 151; 152; 154(a)	Name and identify facilities, artificial islands, MODUs, etc., with signs.	2	149 new/ replacement signs.	298
150; 154(b)	Name and identify wells with signs	1	1,016 new wells	1,016
Subtotal			1,165 responses	1,314
Right-of-use and Easement				
160; 161	OCS lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; including notifications.	10	60 applications	600
160(c)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	Burden covered under 1010–0006		0
165	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices.	5	2 applications	10
		$2,350 state lease fee x 2 = $4,700		
166	State lessees: Furnish surety bond	Burden included with 30 CFR 256 (1010–0006).		0
Subtotal			62 responses	610
			$4,700	
Suspensions				
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operations or production; submit schedule of work leading to commencement*.	10*	325 requests*	3,250
		$1,800 fee x 325 = $585,000		
	Submit progress reports on SOO or SOP as condition of approval*.	3*	1,070 reports*	3,210
177(a)	Conduct site-specific study; submit results. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100	1 study/report	100
177(b), (c), (d); 182; 183, 185; 194.	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document, and related surveys/reports.	Burden included with 30 CFR 250, Subpart B (1010–0151).		0
Subtotal			1,396 responses	6,560
			$585,000	
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations				
180(a), (f), (g), (h), (i), (j).	Notify and submit report on various leaseholding operations and lease production activities.	2	1,400 reports or notices.	2,800
180(a), (b), (c)	When requested, submit production data to demonstrate production in paying quantities to maintain lease beyond primary term.	6	70 submissions	420
180(e)	Request more than 180 days to resume operations.	5	5 requests	25

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Fee		
		Hour burden	Average No. of annual responses	Annual burden hours
181(d); 182(b), 183(b)(2).	Request termination of suspension and cancellation of lease (no requests in recent years for termination/cancellation of a lease; minimal burden).	20	2 requests	40
184	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50	1 request	50
Subtotal			1,478 responses	3,335
Information and Reporting Requirements				
186; 187; 188(a); 189; 190(c).	Report to the District Manager immediately via oral communication and written follow-up within 15 calendar days, incidents pertaining to: Fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including fire-fighting systems).	Oral .5	1,550	775
		Written 4	1,535	6,140
187(d)	Report all spills of oil or other liquid pollutants.	Burden covered with 30 CFR 254 (1010–0091).		0
188(a)(5)	Report to District Manager hydrogen sulfide (H2S) gas releases immediately by oral communication.	Oral burden covered under 1010–0141.		0
188(b); 190(a), (b)	Provide written report to the District Manager within 15 calendar days after incidents relating to: Injuries that result in 1 or more days away from work, on restricted work, or job transfer; gas releases that initiate equipment or process shutdown; property or equipment damage >$25K; operations personnel to muster for evacuation not related to weather or drills; any additional information required.	4	405	1,620
191	Submit written statement/compensation re: accident investigation.	Exempt under 3 CFR 1320.4(a)(2), (c).		0
193	Report apparent violations or non-compliance.	1.5	3 reports	5 (rounded)
194 NTL exception requests.	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1	95 requests	95
194(c)	Report archaeological discoveries (only one instance in many years; minimal burden)..	10	2 reports	20
196	Submit data/information for post-lease G&G activity and request reimbursement.	Burden included with 30 CFR 251 (1010–0048).		0
101–199	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2	21 requests	42
Subtotal			3,611 responses	8,697
Recordkeeping				
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years.	2	2,562 recordkeepers	5,124
109(b)	Retain welding, burning, and hot tapping plan and approval for the life of the facility.	.5	822 operations	411
132(b)(3)	During inspections make records available as requested by inspectors.	2	130 lessees/ operators.	260
Subtotal			3,514 responses	5,795

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Fee		
		Hour burden	Average No. of annual responses	Annual burden hours
Total Burden			18,397 responses	36,239 hours
			$810,200 Fees	

*Due to the *Amber Resources Company* v *U.S.* litigation involving 36 suspended leases, operators in the Pacific Region did not respond to our inquiry because of the sensitivity of the matter.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are three non-hour costs associated with this information collection. The estimated non-hour cost burden is $810,200. Sections 250.143, 250.165, and 250.171 require respondents to pay filing fees when submitting a change in designation of operator, a State lessee applies for a right-of-use and easement, and for either a suspension of operations or production request (SOO/SOP). The application filing fees are required to recover the Federal Government's processing costs. We have not identified any other ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on December 13, 2006, we published a **Federal Register** notice (71 FR 74937) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received one comment in response to the **Federal Register** notice and it was not germane to the IC.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 1, 2007.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 13, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

Editorial Note: This document was received at the Office of the Federal Register on August 28, 2007.

[FR Doc. E7–17278 Filed 8–30–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Central Gulf of Mexico (GOM) Oil and Gas Lease Sale 205

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (FNOS) 205.

SUMMARY: On October 3, 2007, the MMS will open and publicly announce bids received for blocks offered in Central GOM Oil and Gas Lease Sale 205, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256). The Final Notice of Sale 205 Package (FNOS 205 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, October 3, 2007, in the Grand Ballroom C of the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain a FNOS 205 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Internet Web site at *http://www.gomr.mms.gov.*

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the Bid Submission Deadline of 10 a.m. on Tuesday, October 2, 2007. If bids are mailed, please address the envelope containing all of the sealed bids as follows:

Attention: Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Contains Sealed Bids for Oil and Gas Lease Sale 205. Please Deliver to Ms. Nancy Kornrumpf, 6th Floor, Immediately.

Please note: Bidders mailing their bid(s) are advised to call Ms. Nancy Kornrumpf (504) 736–2726, immediately after putting their bid(s) in the mail.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, October 2, 2007. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document ''Blocks Available for Leasing in Central GOM Oil and Gas Lease Sale 205'' included in the FNOS 205 Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams:

Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1 through 12 (These 30 maps sell for $2.00 each.)

LA1 West Cameron Area (Revised November 1, 2000).
LA1A West Cameron Area, West Addition (Revised February 28, 2007).
LA1B West Cameron Area, South Addition (Revised February 28, 2007).
LA2 East Cameron Area (Revised November 1, 2000).
LA2A East Cameron Area, South Addition (Revised November 1, 2000).
LA3 Vermilion Area (Revised November 1, 2000).
LA3A South Marsh Island Area (Revised November 1, 2000).
LA3B Vermilion Area, South Addition (Revised November 1, 2000).
LA3C South Marsh Island Area, South Addition (Revised November 1, 2000).
LA3D South Marsh Island Area, North Addition (Revised November 1, 2000).
LA4 Eugene Island Area (Revised November 1, 2000).
LA4A Eugene Island Area, South Addition (Revised November 1, 2000).
LA5 Ship Shoal Area (Revised November 1, 2000).
LA5A Ship Shoal Area, South Addition (Revised November 1, 2000).
LA6 South Timbalier Area (Revised November 1, 2000).
LA6A South Timbalier Area, South Addition (Revised November 1, 2000).
LA6B South Pelto Area (Revised November 1, 2000).
LA6C Bay Marchand Area (Revised November 1, 2000).
LA7 Grand Isle Area (Revised November 1, 2000).
LA7A Grand Isle Area, South Addition (Revised February 17, 2004).
LA8 West Delta Area (Revised November 1, 2000).
LA8A West Delta Area, South Addition (Revised November 1, 2000).
LA9 South Pass Area (Revised November 1, 2000).
LA9A South Pass Area, South and East Addition (Revised November 1, 2000).
LA10 Main Pass Area (Revised November 1, 2000).
LA10A Main Pass Area, South and East Addition (Revised November 1, 2000).
LA10B Breton Sound Area (Revised November 1, 2000).
LA11 Chandeleur Area (Revised November 1, 2000).
LA11A Chandeleur Area, East Addition (Revised November 1, 2000).
LA12 Sabine Pass Area (Revised February 28, 2007).

Outer Continental Shelf Official Protraction Diagrams (These 19 diagrams sell for $2.00 each.)

NG15–02 Garden Banks (Revised February 28, 2007).
NG15–03 Green Canyon (Revised November 1, 2000).
NG15–05 Keathley Canyon (Revised February 28, 2007).
NG15–06 Walker Ridge (Revised November 1, 2000).
NG15–08 Sigsbee Escarpment (Revised February 28, 2007).
NG15–09 Amery Terrace (Revised October 25, 2000).
NG16–01 Atwater Valley (Revised November 1, 2000).
NG16–02 Lloyd Ridge (Revised February 28, 2007).
NG16–04 Lund (Revised November 1, 2000).
NG16–05 Henderson (Revised February 28, 2007).
NG16–07 Lund South (Revised November 1, 2000).
NG16–08 Florida Plain (Revised February 28, 2007).
NH15–12 Ewing Bank (Revised November 1, 2000).
NH16–04 Mobile (Revised November 1, 2000).
NH16–05 Pensacola (Revised February 28, 2007).
NH16–07 Viosca Knoll (Revised November 1, 2000).
NH16–08 Destin Dome (Revised February 28, 2007).
NH16–10 Mississippi Canyon (Revised November 1, 2000).
NH16–11 De Soto Canyon (Revised February 28, 2007).

Please note: A CD–ROM (in ARC/INFO and Acrobat (.PDF) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15.

For the current status of all Central GOM Leasing Maps and Official Protraction Diagrams, please refer to 66 FR 28002 (published May 21, 2001), 69 FR 23211 (published April 28, 2004), 72 FR 27590 (published May 16, 2007), and 72 FR 35720 (published June 29, 2007). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the ''U.S. 200 Nautical Mile Limit'' line and the ''U.S.-Mexico Maritime Boundary'' line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit. For additional information, please call Ms. Tara Montgomery (504) 736–5722. All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this lease sale is shown in the document ''List of Blocks Available for Leasing in Lease Sale 205'' included in the FNOS 205 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document ''Central Gulf of Mexico Lease Sale 205—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred'' included in the FNOS 205 Package.

Areas Not Available for Leasing: The following whole and partial blocks are not offered for lease in this lease sale:

Block currently under appeal (although currently unleased, the following block is under appeal and bids will not be accepted):

Mississippi Canyon (Map Number NH16–10)

Block 943.

Whole blocks and portions of blocks which lie within the former Western Gap portion of the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Amery Terrace (Area NG 15–09)

Whole Blocks: 280, 281, 318 through 320, and 355 through 359.

Portions of Blocks: 235 through 238, 273 through 279, and 309 through 317.

Sigsbee Escarpment (Area NG 15–08)

Whole Blocks: 239, 284, 331 through 341.

Portions of Blocks: 151, 195, 196, 240, 241, 285 through 298, 342 through 349.

Whole blocks which are beyond the United States Exclusive Economic Zone in the area known as the Northern portion of the Eastern Gap:

Lund South (Area NG 16–07)

Blocks: 172, 173, 213 through 217, 253 through 261, 296 through 305, and 349.

Henderson (Area NG 16–05)

Blocks: 467, 510, 511, 553 through 555, 595 through 599, 638 through 643, 681 through 688, 723 through 732, 766 through 776, 808 through 820, 851 through 863, 893 through 906, 935 through 949, and 977 through 993.

Florida Plain (Area NG 16–08)

Blocks: 7 through 24, 49 through 67, 90 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370.

Blocks that were previously included in the Eastern GOM planning area *and* are within 100 miles of the Florida coast:

Pensacola (Area NH 16–05)

Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, 969 through 975.

Destin Dome (Area NH 16–08)

Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981.

DeSoto Canyon (Area NH 16–11)

Whole Blocks: 1 through 16, 45 through 60, and 92 through 102.

Portions of Blocks: 89 through 91, 103, 104, 135 through 147.

Blocks outside the original Sale 181 area that were previously included in the Eastern GOM planning area *and* are beyond 100 miles of the Florida coast, which are under the 1998 Presidential moratorium until 2012:

DeSoto Canyon (Area NH 16–11)

Whole Blocks: 148, and 185 through 193.

Portions of Blocks: 103, 104, and 141 through 147.

Blocks east of the Military Mission Line (i.e. the north-south line at 86 degrees 41 minutes west longitude), *and* north of the Northern portion of the Eastern Gap, *and* west of the Central *and* Eastern Planning Area Boundary:

Henderson (Area NG 16–05)

Portions of Blocks: 246, 290, 334, 378, 422, and 466.

Blocks that are south of the Sale 181 area, as approved in the Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002, *and* north of the previously noted Northern portion of the Eastern Gap *and* west of the Military Mission Line:

Lloyd Ridge (Area NG 16–02)

Blocks: 529 through 550, 573 through 595, 617 through 639, 661 through 683, 705 through 727, 749 through 771, 793 through 816, 837 through 860, 881 through 904, 925 through 948, and 969 through 992.

Henderson (Area NG 16–05)

Whole Blocks: 1 through 25, 45 through 69, 89 through 113, 133 through 157, 177 through 201, 221 through 245, 265 through 289, 309 through 333, 353 through 377, 397 through 421, 441 through 465, 485 through 509, 529 through 552, 573 through 594, 617 through 637, 661 through 680, 705 through 722, 749 through 765, 793 through 807, 837 through 850, 881 through 892, 925 through 934, and 969 through 976.

Portions of Blocks: 246, 290, 334, 378, 422, and 466.

Florida Plain (Area NG 16–08)

Blocks 1 through 6, 45 through 48, and 89.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953; 43 U.S.C. 1331 *et seq.*, as amended, hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: Initial periods, extensions of initial periods, minimum bonus bid amounts, rental rates, escalating rental rates for leases with an approved extension of the initial 5-year period, royalty rates, minimum royalty, and royalty suspension areas, if any, applicable to this sale are noted below. Depictions of related areas are shown on the map ''Lease Terms and Economic Conditions, Lease Sale 205, Final'' for leases resulting from this lease sale.

Please Note: The MMS has published new official leasing maps and protraction diagrams that include the newly-defined administrative planning area boundaries implemented in this sale. These new boundaries are depicted on the ''Lease Terms and Economic Conditions, Lease Sale 205, Final'' map.

Initial Periods: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to less than 800 meters (pursuant to 30 CFR 256.37, commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation); and 10 years for blocks in water depths of 800 meters or deeper.

Extensions of Initial Periods: A 5-year initial term for a lease issued from this sale may be extended to 8 years if a well targeting hydrocarbons below 25,000 feet true vertical depth subsea (TVD SS) is spudded within the first 5 years of the initial period. The 3-year extension may be granted in cases where the well is drilled to a target below 25,000 feet TVD SS and also in cases where the well does not reach a depth below 25,000 feet TVD SS due to mechanical or safety reasons.

In order for the lease term to be extended to 8 years, you are required to submit to the Regional Supervisor for Production and Development, within 30 days after completion of the drilling operation, a letter providing the well number, spud date, information demonstrating the target below 25,000 feet TVD SS, and, if applicable, any safety or mechanical problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. The Regional Supervisor must concur in writing that the conditions have been met to extend the lease term 3 years. The Regional Supervisor will provide written confirmation of any lease extension within 30 days of receipt of the letter provided.

For any lease that has a well spudded in the first 5 years of the initial period with a hydrocarbon target below 25,000 feet TVD SS, the regulations found at 30 CFR 250.175(a), (b), and (c) *will not* be applicable at the end of the 5th year.

For any lease that does not have a well spudded in the first 5 years of the initial period which targets hydrocarbons below 25,000 feet TVD SS, the regulations found at 30 CFR 250.175(a), (b), and (c) will be applicable, but the 3-year extension *will not* be available. At the end of the 8th year, the lessee is free to use all lease term extension provisions under the regulations.

Minimum Bonus Bid Amounts: A bonus bid will not be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof for blocks in water depths of less than 400 meters or $37.50 or more per acre or fraction thereof for blocks in water depths of 400 meters or deeper; to confirm the exact calculation of the minimum bonus bid amount for each block, see ''List of Blocks Available for Leasing'' contained in the FNOS 205 Package. Please note that bonus bids must be in whole dollar amounts (i.e., any cents will be disregarded by the MMS).

Rental Rates: $6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the 1st day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production. An exception to this rental rate requirement will be escalating rental rates in the 6th, 7th, and 8th year for leases with an approved extension of the initial 5-year period, as noted in the following paragraph of this document.

Escalating Rental Rates for Leases With an Approved Extension of the Initial 5-year Period: Any lease granted a 3-year extension beyond the initial 5-year period will pay an escalating rental rate as set out in the following table, to be paid on or before the 1st day of each lease year until determination of well producibility is received, then at the expiration of each lease year until the start of royalty-bearing production:

Extended lease year no.	Escalating annual rental rate* for a lease in less than 200 meters water depth	Escalating annual rental rate* for a lease in 200 to less than 400 meters water depth
6	$12.50 per acre or fraction thereof	$19.00 per acre or fraction thereof.
7	$18.75 per acre or fraction thereof	$28.50 per acre or fraction thereof.
8	$25.00 per acre or fraction thereof	$38.00 per acre or fraction thereof.

*If another well is spudded during the 3-year extended term of the lease that targets hydrocarbons below 25,000 feet TVD SS, and MMS concurs that this situation has been met, the rental rate will be frozen at the rental rate in effect during the lease year in which the well was spudded.

Royalty Rates: 16⅔ percent royalty rate for blocks in all water depths, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained.

Minimum Royalty: After the start of royalty-bearing production and notwithstanding any royalty suspension which may apply: $6.25 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

Royalty Suspension Provisions

Leases with royalty suspension volumes are authorized under existing MMS rules at 30 CFR Part 260. There are no circumstances under which a single lease could receive a royalty suspension both for deep gas production and for deepwater production.

Section 344 of the Energy Policy Act of 2005, Public Law 109–058 (EPAct05) extends existing deep gas incentives in two ways. First, it mandates an RSV of at least 35 billion cubic feet (Bcf) of natural gas for certain wells completed in a third drilling depth category (greater than 20,000 feet subsea) for leases in 0–400 meters of water. Second, section 344 directs that the same incentives prescribed in MMS' 2004 rule for wells completed between 15,000 feet and 20,000 feet TVD SS on leases in 0–200 meters of water be applied to leases in 200–400 meters of water.

Section 345 of the EPAct05 directs continuation of the MMS deep water incentive program utilized since 2001 in the Gulf of Mexico for leases issued between August 8, 2005, and August 8, 2010, and provides for an increase in royalty suspension volume from 12 MMBOE to 16 MMBOE for leases in water depths greater than 2000 meters.

Deep Gas Royalty Suspensions

A lease issued as a result of this sale may be eligible for royalty relief authorized under the EPAct05, Section 344 (Incentives for Natural Gas Production from Deep Wells in the Shallow Waters of the Gulf of Mexico). The MMS published a proposed rule on May 18, 2007, and will publish a final rulemaking implementing this section of the EPAct05, and if a lease is eligible, it will be subject to the provisions of that final rulemaking, including any price threshold provisions. Please refer to the Royalty Suspension Provisions cited below.

A. *The following Royalty Suspension Provisions apply to qualifying deep wells on leases at least partly in water depths up to 200 meters:* Such wells require a perforated interval the top of which is from 15,000 to less than 20,000 feet true vertical depth subsea (TVD SS). Suspension volumes, conditions, and requirements prescribed in 30 CFR 203.41 through 203.47 and any amendments or successor regulations apply to deep gas production from a lease in this water depth range issued as a result of this sale. Definitions that apply to this category of royalty relief can be found in 30 CFR 203.0. To receive this category of royalty relief, production from a qualified well or drilling of a certified unsuccessful well must commence before May 3, 2009.

B. *The following Royalty Suspension Provisions apply to qualifying deep wells on leases entirely in water depths more than 200 but less than 400 meters:* Such wells require a perforated interval the top of which is from 15,000 to less than 20,000 feet TVD SS. The EPAct05 requires the Secretary to issue regulations granting suspension volumes to leases entirely in water depth more than 200 but less than 400 meters that will be calculated using the same methodology as is currently employed for leases at least partly in water depth up to 200 meters. Deep wells on leases in the 200–400 meter water depth range issued in Sale 205 will be eligible for royalty relief prescribed in the final rulemaking implementing section 344 of the EPAct05.

C. *The following Royalty Suspension Provisions apply to qualifying ultra deep wells on leases entirely in water depths less than 400 meters:* Ultra deep wells (i.e., wells completed with a perforated interval the top of which is 20,000 feet or deeper TVD SS) on leases entirely in water depths less than 400 meters issued in Sale 205 will be eligible for royalty relief prescribed in a final rulemaking implementing section 344 of the EPAct05.

Deep Water Royalty Suspensions

The Following Royalty Suspension Provisions Apply to Deep Water Oil and Gas Production: A lease issued as a result of this sale may be eligible for royalty relief under the EPAct05, section 345 (Royalty Relief for Deep Water Production). The following Royalty Suspension Provisions for deep water oil and gas production apply to a lease issued as a result of this sale. In addition to these provisions, and the EPAct05, refer to 30 CFR 218.151 and applicable parts of 260.120–260.124 for regulations on how royalty suspensions relate to field assignment, product types, rental obligations, and supplemental royalty relief.

1. A lease in water depths of 400 meters or more will receive a royalty suspension as follows, according to the water depth range in which the lease is located:

400 meters to less than 800 meters: 5 million barrels of oil equivalent (BOE).

800 meters to less than 1600 meters: 9 million BOE.

1600 meters to 2000 meters: 12 million BOE.

Greater than 2000 meters: 16 million BOE.

2. In any calendar year during which the arithmetic average of the daily closing prices for the nearby delivery month on the New York Mercantile Exchange (NYMEX) for the applicable product exceeds the adjusted product price threshold, the lessee must pay royalty on production that would otherwise receive royalty relief under 30 CFR Part 260 or supplemental relief under 30 CFR Part 203, and such production will count towards the royalty suspension volume.

(a) The base level price threshold for light sweet crude oil is set at $35.75 per barrel in 2006. The adjusted oil price threshold in any subsequent calendar year is computed by changing the base price by the percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

(b) The base level price threshold for natural gas is set at $4.47 per million British thermal units (MMBTU) in 2006. The adjusted gas price threshold in any subsequent calendar year is computed by changing the base price by the percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

(c) As an example, if the deflator indicates that inflation is 2.5 percent in 2007, then the price threshold in calendar year 2007 would become $36.64 per barrel for oil and $4.58 for gas. Therefore, royalty on oil production in calendar year 2007 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2007 exceeds $36.64 per barrel and royalty on gas production in calendar year 2007 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2007 exceeds $4.58 per MMBTU.

(d) The MMS plans to provide notice in March of each year when adjusted price thresholds for the preceding year were exceeded. Once this determination is made, based on the then-most recent implicit price deflator information, any subsequent adjustments in the implicit price deflator published by the U.S. Government will not affect the determination previously made for that year by MMS regarding lessee qualification for royalty relief. Information on price thresholds is available at the MMS Web site (*http://www.mms.gov/econ*).

(e) In cases where the actual average price for the product exceeds the adjusted price threshold in any calendar year, royalties must be paid no later than 90 days after the end of the year (see 30 CFR 260.122(b)(2) for more detail) and royalties must be paid provisionally in the following calendar year (See 30 CFR 260.122(c) for more detail).

(f) Full royalties are owed on all production from a lease after the Royalty Suspension Volume is exhausted, beginning on the first day of the month following the month in which the Royalty Suspension Volume is exhausted.

Lease Stipulations: The map ''Stipulations and Deferred Blocks, Lease Sale 205, Final'' depicts the blocks on which one or more of twelve lease stipulations apply: (1) Topographic Features; (2) Live Bottoms; (3) Military Areas; (4) Evacuation; (5) Coordination; (6) Blocks South of Baldwin County, Alabama; (7) Law of the Sea Convention Royalty Payment; (8) Protected Species; (9) Limitation on Use of Seabed and Water Column in the Vicinity of the Approved Port Pelican Offshore Liquefied Natural Gas (LNG) Deepwater Port Receiving Terminal, Vermilion Area, Blocks 139 and 140; (10) Below Seabed Operations on Mississippi Canyon Area, Block 920; (11) Limitation on Use of Seabed and Water Column in the Vicinity of the Approved Gulf Landing Offshore LNG Deepwater Port Receiving Terminal, West Cameron Area, Block 213; and (12) Below Seabed Operations on a Portion of Mississippi Canyon Area, Block 650.

Please Note: The MMS published new official leasing maps and protraction diagrams that include the newly-defined administrative planning area boundaries implemented in this sale. These new boundaries are depicted on the ''Stipulations and Deferred Blocks, Lease Sale 205, Final'' map.

The texts of the stipulations are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 205, Final'' included in the FNOS 205 Package. In addition, the ''List of Blocks Available for Leasing'' which is contained in the FNOS 205 Package identifies for each block listed the lease stipulations applicable to that block.

Information to Lessees: The FNOS 205 Package contains an ''Information To Lessees'' document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 205, not to be opened until 9 a.m., Wednesday, October 3, 2007.'' The submitting company's name, its GOM Company number, the map name, map number, and block number should be clearly identified on the outside of the envelope. Please refer to the sample bid envelope included within the FNOS 205 Package. Please also refer to the Telephone Numbers/Addresses of Bidders Form included within the FNOS 205 Package. We are requesting that you provide this information in the format suggested for each lease sale. Please provide this information prior to or at the time of bid submission. Do not enclose this form inside the sealed bid envelope. The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the FNOS 205 Package. A blank bid form has been provided for your convenience which may be copied and filled in.

The MMS published in the **Federal Register** a list of restricted joint bidders, which applies to this lease sale, at 72 FR 19214 on April 17, 2007. Please also refer to joint bidding provisions at 30 CFR 256.41 for additional information. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on

the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the FNOS 205 Package).

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole acre if the tract acreage contains a decimal figure prior to calculating the minimum bonus bid, annual rental, and minimum royalty amounts. The appropriate rate per acre is applied to the next whole (rounded up) acreage figure, and the resultant calculation is rounded up to the next whole dollar amount if the calculation results in a decimal figure (see next paragraph).

Please note: The minimum bonus bid calculation, including all rounding, is shown in the document ''List of Blocks Available for Leasing in Lease Sale 205'' included in the FNOS 205 Package.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 205, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' which can be found on the MMS Web site at *http://www.gomr.mms.gov/homepg/lsesale/205/cgom205.html.* All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 11 a.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please note: Certain bid submitters (i.e., those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend bond coverage; (3) Provide a letter of credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 205 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the Act, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, ''Modifications to the Bid Adequacy Procedures'' at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico Region Public Information Unit or via the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/lsesale/bidadeq.html.*

Successful Bidders: As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I, as amended.

Also, in accordance with regulations at 43 CFR, part 42, subpart C, and/or 2 CFR, part 1400, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 205, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement (GDIS) identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information used as part of the decision to bid or participate in a bid on the block. The GDIS should clearly identify the survey type (2–D or 3–D); survey extent (i.e., number of line miles for 2D or number of blocks for 3D) and imaging type (pre-stack, post-stack and migration algorithm) of the data and information. The statement must also include the name and phone number of a contact person, and an alternate, who are both knowledgeable about the depth data listed, the owner or controller of the reprocessed data or information, the survey from which the data was reprocessed and the owner/controller of the original data set, the date of reprocessing and whether the data was processed in-house or by a contractor. In the event such data and information includes multiple data sets processed from the same survey using different velocity models or different processing parameters, you should identify only the highest quality data set used for bid preparation. The MMS reserves the right to query about alternate datasets and to quality check and compare the listed and alternative data sets to determine which data set most closely meets the

needs of the fair market value determination process.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

In the event your company supplies any type of data to the MMS, in order to get reimbursed, your company must be registered with the Central Contractor Registration (CCR) at *http://www.ccr.gov.* This is a requirement that was implemented on October 1, 2003, and requires all entities doing business with the Government to complete a business profile in CCR and update it annually. Payments are made electronically based on the information contained in CCR. Therefore, if your company is not actively registered in CCR, the MMS will not be able to reimburse or pay your company for any data supplied.

An Example of the Preferred Format for the Geophysical Data and Information Statement and a sample of the Geophysical Envelope Preferred Format are included in the FNOS 205 Package.

Please also refer to NTL No. 2003–G05 for more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Dated: August 24, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E7–17281 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Record of Decision for Outer Continental Shelf (OCS), Central Gulf of Mexico (GOM), Oil and Gas Lease Sale 205

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Record of Decision.

SUMMARY: The Minerals Management Service (MMS) has issued a Record of Decision for OCS Central GOM Lease Sale 205 (October 2007). As part of the decision process, MMS published in April 2007 a final environmental impact statement (EIS) on the 2007–2012 Western and Central GOM oil and gas leasing proposals, including Sale 205. In preparing this decision, MMS has considered alternatives to the proposed actions, the impacts of Sale 205 as presented in the EIS, and all comments received throughout the EIS-process.

AVAILABILITY: To obtain a copy of the Record of Decision and Final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Record of Decision and Final EIS is available at the MMS's Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2793.

Dated: August 24, 2007.

Chris C. Oynes,

Associate Director for, Offshore Minerals Management.

[FR Doc. E7–17286 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission of Study Package to the Office of Management and Budget; Opportunity for Public Comment (OMB# 1024–xxxx, ''Visibility Valuation in National Parks and Wilderness Areas: Pre-Test and Pilot Test'')

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB# 1024–xxxx). The 30-Day **Federal Register** Notice for this collection of information was published on August 10, 2007 (Volume 72, Number 154, Pages 45066–45067), was published in error and should be recognized as an incorrect version. The correct publication of the 30-Day **Federal Register** Notice for this collection of information will be published on August 28, 2007, and should be recognized as the correct version. If you have any questions or concerns regarding this matter, please contact Mr. Leonard E. Stowe, NPS, Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240; or via fax at 202/371–1427; or via e-mail at *leonard_stowe@nps.gov.*

Dated: August 22, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–4272 Filed 8–30–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Off-Road Vehicle Management Plan, Environmental Impact Statement, Glen Canyon National Recreation Area, Arizona and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for an Off-Road Vehicle Management Plan, Glen Canyon National Recreation Area, Arizona and Utah.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for an Off-Road Vehicle (ORV) Management Plan for Glen Canyon National Recreation Area, Arizona and Utah. This effort will result in an ORV Management Plan/EIS to guide the management of ORV use at Glen Canyon National Recreation Area (NRA). The ORV Management Plan/EIS may also form the basis for a special regulation pursuant to 36 CFR 4.10 to regulate ORV use at Glen Canyon NRA.

The ORV Management Plan/EIS would address three spheres of ORV use at Glen Canyon: (1) At the Lone Rock Beach area; (2) at 14 designated accessible shoreline areas; and (3) on 388 miles of park roads. The ORV Management Plan/EIS will assess potential environmental impacts associated with a range of reasonable alternatives for managing ORV impacts on park resources such as threatened and endangered species, soils, vegetation, wildlife, cultural resources, and other appropriate topics. Socioeconomic impacts and effects on visitor experience and public safety will also be analyzed.

DATES: To determine significant issues related to ORV management at Glen Canyon NRA, and to identify a range of alternatives for ORV management, the National Park Service will hold public scoping workshops in Page, Arizona, Escalante, Utah, and Monticello, Utah.

Dates and times of these meetings will be announced publicly. The Park Service will accept comments from the public through October 1, 2007.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov*, and at Glen Canyon NRA headquarters, 691 Scenic View Drive, Page, Arizona. Phone number (928) 608–6200.

FOR FURTHER INFORMATION CONTACT: Kevin Schneider, Management Assistant, Glen Canyon NRA, 691 Scenic View Drive, Page, Arizona. Phone number (928) 608–6208.

SUPPLEMENTARY INFORMATION: A scoping brochure has been prepared that discusses the purpose and need for action and details the issues identified to date. Copies of the scoping brochure may be obtained from Glen Canyon NRA, 691 Scenic View Drive, Page, Arizona. The phone number is (928) 608–6200. You may also obtain the scoping brochure or via the Internet at *http://parkplanning.nps.gov*.

If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to ORV Management Plan/EIS, Glen Canyon NRA, PO Box 1507, Page, Arizona 86040. You may also comment via the Internet at *http://parkplanning.nps.gov*. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at phone number (928) 608–6200. Finally, you may hand-deliver comments to Glen Canyon NRA, 691 Scenic View Drive, Page, Arizona. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 6, 2007.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 07–4273 Filed 8–30–07; 8:45 am]

BILLING CODE 4312–EF–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 18, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 17, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Yavapai County

Peeples Valley School, 18205 U.S. 89, Peeples Valley, 07000991.

ARKANSAS

Garland County

Buckville Cemetery, Buckville Rd., Avant, 07000994.

Little River County

Mills Cemetery, Cty Rd. 40, approx. 1/8 mi. W of AR 71N, Wilton, 07000992.

Pulaski County

Schaer, Fred and Lucy Alexander, House, 13219 AR 70, Galloway, 07000993.

CALIFORNIA

Alameda County

Alameda Veterans' Memorial Building, 2203 Central Ave., Alameda, 07000995.

Los Angeles County

Royal Laundry Complex, 443 S. Raymond Ave., Pasadena, 07000996.

Mendocino County

Spotswood House, 11820 West Rd., Potter Valley, 07000997.

COLORADO

Jackson County

Lake Agnes Cabin, 2.5 mi. from CO 14, near Cameron Pass, Gould, 07000998.

Larimer County

Flattop Mountain Trail, (Historic Park Landscapes in National and State Parks MPS) Rocky Mountain Park, Estes Park, 07000999.

GEORGIA

Clarke County

West Cloverhurst Avenue Historic District, W. Cloverhurst Ave. vet. Springdale St. and S. Milledge Ave., Athens, 07001000.

DeKalb County

Klondike Historic District, Klondike and S. Goddard Rds., Klondike, 07001001.

Sumter County

Third District A & M School—Georgia Southwestern College Historic District, 800 Wheatley St., Americus, 07001002.

IOWA

Mahaska County

Edmundson Park Historic District, Jct. of 11th Ave. W and Edmundson Dr., Oskaloosa, 07001005.

Story County

Lincoln Township Mausoleum, Cty Rd. E18, N end of Pearl St., Zearing, 07001004.

LOUISIANA

Morehouse Parish

Walnut Grove, 9069 Oak Ridge Rd., Mer Rouge, 07001007.

Orleans Parish

Union Bethel A.M.E. Church, 2321 Thalia, New Orleans, 07001003.

Richland Parish

St. David's Episcopal Church, 834 Louisa St., Rayville, 07001006.

MASSACHUSETTS

Essex County

Haverhill Board of Trade Building, 16–18 and 38–42 Walnut St., Haverhill, 07001008.

MICHIGAN

Oakland County

Scripps, William Edmund and Nina A. Downey, Estate, 1840 Scripps Rd., Lake Orion, 07001009.

Wexford County

Cadillac Public Library, 127 Beech St., Cadillac, 07001020.

NEVADA

Washoe County

Bank of Sparks, 948 Victorian Ave., Sparks, 07001013.

NEW YORK

Cayuga County

Auburn Button Works and Logan Silk Mills, 9–11 Logan St., Auburn, 07001014.

Herkimer County

Yale—Cady Octagon House and Yalke Lock Factory Site, 7550 N. Main St., Newport, 07001019.

Seneca County

Cobblestone Farmhouse at 1027 Stone Church Rd., (Cobblestone Architecture of New York State MPS) 1027 Stone Church Rd., Junius, 07001017.

Cobblestone Farmhouse at 1111 Stone Church Road, (Cobblestone Architecture of New York State MPS) 1111 Stone Church Rd., Junius, 07001018.

St. Lawrence County

Wanakena Presbyterian Church, 32 Second St., Wanakena, 07001015.

Suffolk County

Smith—Taylor Cabin, Taylor's Island, Shelter Island, 07001016.

NORTH CAROLINA

Chowan County

Edenton Historic District (Boundary Increase II), Roughly bounded by Filberts Creek, W. Hicks St., Park Ave., the RR right of way, and the original Edenton Historic District, Edenton, 07001010.

Johnston County

Smithfield Masonic Lodge, 115 N. Second St., Smithfield, 07001012.

Mecklenburg County

Siloam School, W side of Mallard Highlands Dr., Approx. 0.25 mi. S from jct. of John Adams Rd., Charlotte, 07001011.

SOUTH CAROLINA

Richland County

Forest Hills Historic District, Bounded by Gervais St., Manning St., Forest Dr., and Glenwood Rd., Columbia, 07001024.

Price, Raymond, House, 3004 Forest Dr., Columbia, 07001022.

Spartanburg County

Converse Heights Historic District, Roughly parts of Clifton, Connecticut, Glendalyn, Hale, Maple, Mills, NOrwood, Otis, Palmetto, Plume, Poplar, Rutledge, Spartanburg, 07001021.

TEXAS

Harris County

Sabine Street Bridge over Buffalo Bayou, (Historic Bridges of Texas MPS) Sabine St. at Buffalo Bayou, Houston, 07001023.

VERMONT

Lamoille County

Waterville Village Historic District, VT 109, Oakes Rd., Church St., Griffin Rd., Fox Hill Rd., Beals Hill Rd., Lapland Rd., Waterville, 07001026.

Windham County

Bridge 19, (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS) Grassy Brook Rd., Brookline, 07001025.

[FR Doc. E7–17382 Filed 8–30–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0030 and 1029–0049

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; and 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors. These collection requests have been forwarded tot he Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 1, 2007, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via 3-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request contact John Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; and 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections are 1029–0030 for Part 764, and 1029–0049 for Part 822.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 27, 2007 (72 FR 19215). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations Areas designated by Act of Congress.

OMB Control Number: 1029–0030.

Summary: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority

uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mending operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Individuals, groups or businesses that petition the States, and the State regulatory authorities that must process the petitions.

Total Annual Responses: 3.

Total Annual Burden Hours: 4,920.

Total Annual Non-wage Costs: $150.

Title: 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10)(F) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 21 coal mining operators who operate on a alluvial valley floors and the State regulatory authorities.

Total Annual Responses: 42.

Total Annual Burden Hours: 2,300.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES.** Please refer to the appropriate OMB control number in all correspondence.

Dated: August 28, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–4280 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105–1106 (Final)]

Lemon Juice From Argentina and Mexico

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: August 27, 2007.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On June 6, 2007, the Commission established a schedule for the conduct of the final phase of the subject investigations (72 FR 31342, June 6, 2007). On August 23, 2007, counsel for petitioner, Sunkist, and counsel for respondent, the Coca-Cola Company, and, on August 24, 2007, counsel for respondent, Argentinian producer/exporter Citrusvil, submitted requests to the Commission that its schedule in these investigations be modified in order to give the Department of Commerce (Commerce) and the parties to these investigations the opportunity to fully consider the proposed Agreements Suspending the Antidumping Duty Investigations of Lemon Juice from Argentina and Mexico. The Commission, therefore, is modifying its schedule in response to these requests.

The Commission's new schedule for the investigations is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than September 7, 2007; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on September 13, 2007; the prehearing staff report will be placed in the nonpublic record on September 4, 2007; the deadline for filing prehearing briefs is September 11, 2007; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on September 18, 2007; the deadline for filing posthearing briefs is September 25, 2007; the Commission will make its final release of information on October 11, 2007; and final party comments are due on October 15, 2007.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority : These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 28, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17270 Filed 8–30–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes; Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit information for 2007 monitoring reports.

SUMMARY: Pursuant to statute (see below), the Commission monitors U.S. imports of fresh or chilled tomatoes and fresh or chilled peppers, other than chili peppers, for the purpose of expediting an investigation under certain U.S. safeguard laws, should an appropriate petition be filed. As part of that monitoring, the Commission has instituted investigations under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) for the purpose of compiling data on trade and the domestic industry. The Commission is in the process of preparing its data series for the period ending June 30, 2007, and is seeking input from interested members of the public. The Commission expects to make its data series available to the public in electronic form on the Commission's Web site in November 2007.

DATES: September 20, 2007: Deadline for filing written submissions and other information.

November 21, 2007: Anticipated posting of Commission report.

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: Timothy McCarty (202–205–3324, *timothy.mccarty@usitc.gov*) or Jonathan Coleman (202–205–3465, *jonathan.coleman@usitc.gov*), Agriculture and Fisheries Division, Office of Industries, for general information, or William Gearhart (202–205–3091, *william.gearhart@usitc.gov*), Office of the General Counsel, for information on legal aspects. 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: Section 316 of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3381) requires that the Commission monitor U.S. imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act. Section 316 does not require that the Commission publish reports on this monitoring activity or otherwise make the information available to the public. However, the Commission maintains current data files on tomatoes and peppers in order to conduct an expedited investigation should a request be received. Following enactment of section 316, the Commission instituted investigation No. 332–350, *Monitoring of U.S. Imports of Tomatoes* (59 FR 1763), and investigation No. 332–351, *Monitoring of U.S. Imports of Peppers* (59 FR 1762).

The Commission will continue to make its reports available to the public in electronic form (with the exception of any confidential business information (CBI)), and will maintain electronic copies of its reports on its Web site until one year after the monitoring requirement expires on January 1, 2009. The most recent Commission monitoring reports in this series were published in November 2006 and are available on the Commission's Web site.

Written Submissions: The Commission does not plan to hold a public hearing in connection with preparation of these reports. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed. All submissions should be addressed to the Secretary, and should be received no later than the close of business on September 4, 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 the filing of 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 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 confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission will not publish such confidential business information in the monitoring reports it posts on its Web site in a manner that would reveal the operations of the firm supplying the information. However, the Commission may include such information in any report it sends to the President under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act, if it is required to conduct an investigation involving these products under either of these statutory authorities.

By order of the Commission.

Issued: August 27, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17230 Filed 8–30–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 7–21]

United Prescription Services, Inc. Revocation of Registration

On February 13, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to United Prescription Services, Inc. (Respondent), of Tampa, Florida. The Order immediately suspended Respondent's DEA Certificate of Registration, BU6696073, as a retail pharmacy, based on my preliminary finding that Respondent was diverting large quantities of controlled substances and that its continued registration during the pending of these proceedings ''would constitute an imminent danger to the public health and safety because of the substantial likelihood that [it would] continue to divert controlled substances.'' Show Cause Order at 4 (citing 21 U.S.C. 824(d)). The Order also sought the revocation of Respondent's registration on the ground that its ''continued registration is inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that Respondent distributed large quantities of controlled substances based on prescriptions that it knew or should have known ''were not written for a legitimate medical purpose or were written by a practitioner not acting in the usual course of professional practice.'' *Id.* More specifically, the Show Cause Order alleged that between

October 1, 2005, and January 31, 2006, Respondent distributed 1,808,693 dosage units of controlled substances and that more than 1,275,000 dosage units of these controlled substances were prescribed by a single physician. *Id.* at 3. Relatedly, the Show Cause Order alleged that during this period, Respondent filled 11,830 prescriptions which were written under a single physician's registration. *Id.*

The Show Cause Order further alleged that Respondent ''is owned and operated by Mr. Samuel Ballinger,'' and that Mr. Ballinger also ''controlled and operated University Physician Resources, Inc.,'' (hereinafter, University), which either employed or contracted with physicians and other persons who issued prescriptions for controlled substances that were ordered through several internet sites, and which were then filled by Respondent. *Id.* at 1–2. The Show Cause Order also alleged that Respondent filled prescriptions issued by physicians who were affiliated with other internet sites. *Id.*

The Show Cause Order alleged that Respondent knew or should have known that the prescriptions were invalid. *Id.* at 2. Specifically, the Show Cause Order alleged that ''the prescribing physicians were geographically separated from the majority of their customers,'' thus indicating that it was likely that the physicians had not examined the customers, and that ''[t]he volume of the prescriptions generated by one physician in a given period of time was so excessive as to indicate that the practitioner could not have conducted an appropriate medical exam, obtained a medical history, or made a prior diagnosis.'' *Id.* Relatedly, the Show Cause Order alleged that while Respondent required the physicians ''to submit an affidavit indicating that [they] had supervised and directed a medical exam[,] [it] knew that, in many cases, the prescribing physician had not directed and supervised any examination.'' *Id.*

As for those instances ''in which physicians obtained medical records from other medical professionals prior to issuing'' a controlled-substance prescription, the Show Cause Order alleged that Respondent ''knew the physicians did not consult with the medical professionals who conducted the physical examinations.'' *Id.* The Show Cause Order also alleged that ''Mr. Ballinger directed individuals without a DEA registration to issue prescriptions for controlled substances using the DEA registration of physicians employed by University'' and that Respondent ''then filled those invalid prescriptions for controlled substances.'' *Id.* Relatedly, the Show Cause Order alleged that Respondent filled numerous prescriptions issued by Dr. Wayne Starks after the expiration of Starks' registration and its retirement from the DEA database. *Id.* at 3.

The Show Cause Order also alleged that Respondent violated various other provisions of Federal law and regulations. Specifically, the Show Cause Order alleged that Respondent was purchasing bulk hydrocodone powder and manufacturing controlled substances without a manufacturer's registration as required by 21 U.S.C. 822(b). *Id.* at 4. The Show Cause Order alleged that this activity was not compounding because it was not done ''pursuant to individual prescriptions.'' *Id.* The Show Cause Order also alleged that Respondent violated 21 CFR 1306.05(a) by filling prescriptions which ''either did not contain the full address of the patient or contained an incorrect address for the patient,'' *id.,* and by dispensing a prescription which bore one physician's DEA number but which ''appeared to be signed by'' a different physician. *Id.* at 3.

Finally, the Show Cause Order alleged that Respondent violated various provisions of state law. Specifically, the Show Cause Order alleged that Respondent ''dispensed controlled substances into a number of states in which the dispensing violated the state law'' because the prescription had not been written by a physician licensed under the laws of the patient's state. *Id.* (citing Cal. Health & Safety Code § 11352). Relatedly, the Show Cause Order alleged that Respondent had ''shipped controlled substances into * * * Kentucky in violation of Kentucky law.'' *Id.* at 3–4 (citing Ky. Rev. Stat. Ann. § 315.320).

On February 14, 2007, the Show Cause Order was served on Respondent. Thereafter, on March 5, 2007, Respondent, through its counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing on April 9 through 13, 2007, in Arlington, Virginia. At the hearing, both parties elicited the testimony of witnesses and introduced documentary evidence. Following the hearing, both parties submitted briefs containing their proposed findings of fact and conclusions of law.

On May 31, 2007, the ALJ issued her decision. In that decision, the ALJ found ''that the prescriptions that Respondent filled were not issued in the course of a legitimate physician-patient relationship'' and thus were ''not valid prescriptions.'' ALJ at 67. In support of this finding, the ALJ noted that it was ''undisputed that Dr. Reppy'' (who worked for University and wrote a large number of the prescriptions filled by Respondent), ''examined few, if any, of the patients to whom he issued prescriptions.'' *Id.* at 65. While the ALJ acknowledged Dr. Reppy's testimony that he had ''spoke[n] with some of the doctors who had previously treated patients with whom [he] consulted by telephone,'' the ALJ found dispositive that ''there is no evidence that any of these doctors referred their patients to University or Dr. Reppy.'' *Id.* Relatedly, the ALJ noted that there was also ''no evidence whatsoever that any physicians who had examined Respondent's customers had referred them to the physicians who prescribed to them and sent the prescriptions to Respondent to be filled.'' *Id.* at 66. Finally, the ALJ noted that ''in some instances the records show that physicians who had examined these individuals refused to prescribe analgesics to them.'' *Id.* The ALJ thus concluded ''that there was no physician-patient relationship between Dr. Reppy—or any of the other physicians discussed above who issued prescriptions that Respondent filled—and the customers to whom they issued those prescriptions.'' *Id.*

Relatedly, the ALJ found that ''Mr. Ballinger established a scheme whereby University, which he controlled, would employ a physician to issue prescriptions for Respondent to fill, and that representatives of Respondent also actively arranged with operators of websites that solicited customers to obtain prescriptions after telephonic consultations with physicians that the physicians would send those prescriptions to Respondent to be filled.'' *Id.* at 66. The ALJ thus further found that Respondent knew the prescriptions were invalid and violated 21 CFR 1306.04(a) when it filled them. *Id.* at 67.

Moreover, having concluded that the prescriptions Respondent filled were invalid, the ALJ further held that ''Respondent's production of dosage form controlled substances was not compounding within the meaning of the Controlled Substances Act * * * and that * * * Respondent manufactured controlled substances without holding a DEA registration to do so.'' *Id.* The ALJ thus further found that Respondent violated 21 U.S.C. 841(a). *Id.* at 68.

Finally, the ALJ rejected—as unsupported by the record—Respondent's assertion that in January 2007, it changed its practices. *Id.* at 68–69 (quoting Resp. Br. at 12). The ALJ

thus concluded that ''Respondent's continued registration would be inconsistent with the public interest'' and recommended that its registration be revoked and that its pending application for renewal be denied. *Id.* at 69.

Thereafter, Respondent filed exceptions. Therein, Respondent ''agrees with the Recommended Ruling's finding that the evidence showed that in many instances, prescriptions by Dr. Reppy were issued based on a telephonic interaction with the patient after review of medical records that included a physical examination which was conducted by a practitioner who did not necessarily have a referral arrangement with Dr. Reppy.'' Resp. Exceptions at 4 n.4.

Respondent argues, however, that the ALJ's proposed decision imposes ''a requirement that a prescribing practitioner either personally conduct a physical examination of a patient or have a referral arrangement with another health care practitioner who personally conducts a physical examination of a patient in order to have a valid doctor-patient relationship.'' *Id.* at 3. Respondent argues that the ALJ's decision thus ''adopts a new national standard for the requirements of a valid doctor-patient relationship that is completely unsupported by current federal law and regulation and which is outside the scope of the Controlled Substances Act.'' *Id.* Respondent thus contends that the ALJ's decision ''seeks to * * * regulate the practice of medicine.''[1] *Id.* at 3 n.2 (citing *Gonzales* v. *Oregon,* 126 S.Ct. 904, 923 (2006)).

On June 26, 2007, the ALJ forwarded the record to me for final agency action. Having reviewed the entire record, I hereby issue this Decision and Final Order. While I do not adopt the ALJ's reasoning with respect to the validity of the prescriptions, the record nonetheless establishes that both Dr. Reppy and the other physicians issued prescriptions in violation of various state laws because the physicians were engaged in unlicensed activity and/or failed to comply with applicable state standards of practice for issuing treatment recommendations including the prescribing of controlled substances. I further conclude that the record establishes that Respondent had reason to know that numerous prescriptions it filled were unlawful because the prescribing physicians either did not establish a valid doctor/patient relationship or were engaged in the unlicensed practice of medicine.

Relatedly, I find Respondent violated Federal law by filling numerous prescriptions issued by a physician whose DEA registration had expired and a physician assistant who lacked authority to prescribe controlled substances under Florida law. I therefore adopt the ALJ's ultimate conclusion that Respondent's continued registration would be inconsistent with the public interest and will revoke its registration and deny its pending application for renewal. I make the following findings.

Findings

Respondent United Prescription Services, Inc., is licensed in the State of Florida as a community pharmacy and as a retail pharmacy wholesaler. Resp. Ex. 1, at 2–5. Respondent also holds or has held[2] numerous out-of-state or non-resident pharmacy licenses. *See id.* at 6–124.

Respondent is also the holder of DEA Certificate of Registration, BU6696073, which authorizes it to dispense controlled substances in schedules II through V as a retail pharmacy at the registered location of 2304 E. Fletcher Ave., Tampa, Florida. Gov. Ex. 1, at 1. While Respondent's certificate indicates that its registration expired on May 31, 2006, *id.,* Respondent submitted a timely application for renewal of its registration. ALJ Ex. 4, at 1. I therefore find that Respondent holds a current registration (albeit in suspended status) pending the issuance of this Final Order. *See* 5 U.S.C. 558(c).

Respondent was founded by Mr. Robert Carr, a Tampa, Florida personal injury lawyer, ''to fill prescriptions for personal injury patients.'' Gov. Ex. 87, at 2. Mr. Samuel Ballinger, Respondent's current owner, was an administrator at a law firm where Carr practiced. *Id.* According to a statement given by Mr. John Todd Miller, Ballinger and Carr were partners in Respondent. *Id.* However, Respondent introduced into evidence a copy of a sales agreement dated March 25, 2005, under which Carr, who was then the sole shareholder and owner of Respondent sold his interest to Ballinger. Resp. Ex. 5, at 1.

In addition to Mr. Miller's statement, the record contains evidence indicating that Ballinger was involved in the operation of Respondent from before the date of this transaction. For example, Ballinger was listed on several of Respondent's Uniform Business Reports as a corporate officer or director. *See* GX 97, at 6 (Jan. 27, 2001 filing listing Ballinger as Respondent's President/Director); GX 74 (August 18, 2002 filing listing Ballinger as Respondent's President). While on Respondent's January 2003 filing Ballinger was no longer listed as Respondent's President, GX 97, at 9; the record also contains a July 16, 2003 letter from a physician, Mildred E. Watson, to Ballinger, at Respondent's address, in which she expressed her excitement at joining Respondent's ''nationwide physicians network.'' GX 62, at 83.

Moreover, during the cross-examination of Robert Reppy, a physician who worked for Ballinger at University Physician Resources[3] between early 2004 and October 2006, Respondent's counsel stipulated that Ballinger had a relationship/affiliation with Respondent during the period of Reppy's employment at University. Tr. 1172–73. Consistent with Mr. Miller's statement that Carr and Ballinger were partners, *see* GX 87, at 2; Reppy testified that ''Ballinger was a major stockholder'' in Respondent and was Carr's partner. Tr. 1173. Furthermore, Reppy testified that Ballinger directed that the prescriptions he issued be faxed to Respondent. *Id.* at 1179; *see also* GX 87, at 4 (statement of Miller). Thus, even if Ballinger did not have an equity interest in Respondent prior to the sale, it is clear that Ballinger had a relationship with Respondent and its owner during Reppy's employment with University.

According to Mr. Miller, Respondent ''did not do well initially.'' GX 87, at 3. Eventually, Mr. Ballinger obtained ''a computer program for an Internet pharmacy business'' and Ballinger and Carr opened ''their own Internet pharmacy site and began filling internet prescriptions.'' *Id.* Miller also introduced a Florida-based physician, Juan Ibanez, to Ballinger and Carr. *Id.* Thereafter, Ibanez began issuing prescriptions for persons who visited Ballinger's and Carr's Web site. *Id.* Numerous patient files (that were seized from Respondent) indicate that it filled these prescriptions. *See, e.g.*, GX 110 (Excerpt 2 at 4893–94); *id.* (Excerpt 3, at 5277, 5279, 5284), *id.* (Excerpt 6, at 9750, 9758, 9764, 9770), *id.* (Excerpt 9, at 3937, 3938). According to Miller, both the computer servers and call center for the internet business ''were located inside'' Respondent at its Tampa location. GX 87, at 3.

Miller further stated that five or six internet pharmacy Web sites were affiliated with Respondent. *Id.* at 5.

[1] Relatedly, Respondent also contends that it was improper for the ALJ to rely on the testimony of DEA's expert witness, Dr. Carmen Catizone, ''as the basis for a legal standard applicable to the regulation of the practice of medicine.'' *Id.* at 6.

[2] As the ALJ observed, some of these licenses had expired.

[3] University's role is discussed below.

Throughout the patient files, there are numerous documents indicating that Respondent filled prescriptions that were sent to it through internet sites such as *http://www.fedxmeds.com,* PhoneConsultation.Com, and accuratemd.com. *Id.; see also* GX 110 (Excerpt 3, at 5202–03; and Excerpt 4, at 6980, 6994–96); GX 84 at 2 (affidavit of Robert Reppy).

Ballinger was also the owner of University, a clinic which provided both in-office medical treatment and what it termed ''telemedicine.'' *See* GX 22; GX 87, at 4; GX 84, at 1 (affidavit of Robert Reppy). University employed various physicians including Dr. Robert Reppy, a doctor of osteopathy, and a physician's assistant, John Protheroe. GX 84, at 2–4. Ballinger hired Reppy in early 2004, to replace other physicians (Juan Ibanez, M.D., and Richard Long, M.D.) who had left the clinic. *Id.* at 2. With the exception of the period between November 2004 and March 2005 when he was on a leave of absence, Reppy worked for University until October 2006. *Id.* at 2–5. During the course of his employment at University, Ballinger ''directed [its] operations.'' *Id.* at 5.

At University, Reppy, who was licensed only in the State of Florida, *id.* at 1, reviewed the medical records provided by individuals and conducted telephone consultations with them. *Id.* at 3. According to Reppy, ''most of [his] patients * * * were telephone consultation patients who were referred to University by an Internet Web site.''[4] *Id.* Moreover, ''many of [his] patients were from outside the [S]tate of Florida.'' *Id.* Based on his review of a person's medical records and the telephone consultation, Reppy would decide whether to issue a prescription for the person's purported condition. *Id.* Most of the prescriptions Reppy issued were for controlled substances such as schedule III drugs containing hydrocodone and schedule IV benzodiazepines such as alprazolam and diazepam. *See* GX 99, at 15; *see also* GX 66.

At University, Reppy ''consulted with approximately 30 patients per day.'' GX 84, at 3. Reppy also ''reviewed the * * * files for the patients for whom Mr. Protheroe wrote prescriptions,'' which were also based on a review of medical records and a telephone consultation. *Id.* at 2. According to Reppy's affidavit, ''[m]ost of the prescriptions written by Mr. Protheroe were for controlled substances,'' and were then ''sent to [Respondent] to be filled unless otherwise directed by the patient.'' *Id.; see also* Tr. at 1139. Reppy further testified that Ballinger directed that University's prescriptions be faxed to Respondent. *Id.* at 1179.

While Reppy was on his leave of absence, ''Protheroe continued to write prescriptions for controlled substances using [Reppy's] DEA number and electronic signature.'' GX 84 at 4. According to Reppy, Protheroe did not have ''permission to issue prescriptions in my name while I was on leave,'' and was authorized ''to issue prescriptions [only] while he worked under [Reppy's] supervision.'' *Id.*

In his testimony, Reppy stated that Protheroe wrote ''over 14,000 prescriptions'' without his permission during the period of his leave of absence. Tr. at 1182–83, 1193, 1198. To rebut this testimony, Respondent introduced Protheroe's sworn statement in which he ''specifically denied'' having issued prescriptions without Reppy's ''knowledge or permission.'' Resp. Ex. 33.

Respondent also introduced into evidence the affidavit of Richard Furlong, who asserted that he worked at University from February through May 2005. *See* Resp. Ex. 23. In his declaration, Mr. Furlong stated that ''Reppy supervised and authorized prescriptions issued by Mr. Protheroe and was uncompromising that the decision to issue a prescription rested with him.'' *Id.* at 1. Furlong added that while he ''was there on an everyday basis, [he] never heard any discussion about nor saw information indicating that Mr. Protheroe was not practicing under the supervision of Dr. Reppy, or that he took direction from anyone, including Samuel Ballinger, other than Dr. Reppy.'' [5]

The ALJ did not make any findings regarding this factual dispute. *See* ALJ at 67 n.97. As ultimate fact finder, I do. I credit Dr. Reppy's testimony noting that he was subject to Respondent's re-direct examination [6] and stuck to his story. In contrast, Respondent did not call either Protheroe or Furlong to testify and thus they were not subject to cross-examination by the Government. Furthermore, Mr. Furlong was at University for only a short period after Reppy returned to work, and Reppy, in his April 4, 2007 affidavit, stated that he had only ''recently bec[o]me aware'' of these prescriptions. GX 84, at 4. I thus find that at the time Furlong worked at University, Reppy was unaware of Protheroe's activities during his leave of absence. I further find that because Ballinger allowed Protheroe to work out of the office, Tr. 1199–1200, 1210; the records may not even have been in the clinic.

In his testimony, Reppy maintained that his practice did not involve making new diagnoses, but rather, ''monitoring stable patients whose diagnoses are already well known.'' *Id.* at 1109. Dr. Reppy further asserted that many of his patients contacted him because their original doctors were ''not willing to do pain management for them because that's not their main purview.'' *Id.* at 1116. Dr. Reppy also stated that ''many'' of his patients ''have tried to get pain management from their local hospital or pain management centers,'' but ''they are expected to come in'' either every two weeks or every month, and that their ''prescriptions are not refilled unless they show up in person,'' and that these office visits ''will often cost them $150 or more.'' *Id.*

Reppy further asserted that he had ''rejected hundreds'' of ''patients'' because they ''cannot prove that they have the condition they claim'' or had submitted ''fraudulent records.'' *Id.* at 1117–18. Reppy also maintained that he never ''diagnose[d] over the phone'' because ''[t]hat would be inappropriate medicine,'' *id.* at 1123, that the initial diagnosis was performed by the ''local doctor that actually saw them and performed the physical examination,'' *id.*, and that the ''patients are required to submit documentation from their own local physicians, including radiology reports'' before he would conduct a consultation. *Id.* at 1124. Reppy also testified that there are certain conditions that are too complex to be ''appropriately * * * treated in a telemedicine format'' such as heart conditions and pancreatitis. *Id.* at 1125–26.

Reppy further testified that during his consultations he would ask his patients to subjectively rate their pain on a scale of one-to-ten, with the latter being ''the worst pain they can imagine.'' *Id.* at 1129–30. Reppy acknowledged, however, that this was ''not as useful as the evaluation of the pain you're getting from the'' notes of the doctor who examined the patients, ''but it's still useful because you're getting an idea of the patient's own perception of'' his pain level, and that it was useful to evaluate the evolution of a patient's ''pain over time.'' *Id.*

[4] According to Dr. Reppy's sworn statement, when he started working at University, his ''patients'' were referred to him by fedexmeds.com and this continued until he went on his leave of absence. GX 84, at 2–3. When, in March 2005, Reppy returned to University, fedexmeds was no longer referring ''patients'' to it. *Id.* at 3. Other websites were, however, and Reppy admitted that he continued to issue prescriptions based on medical records and a telephonic consultation. *Id.*

[5] In his testimony, Reppy denied knowing Furlong. Tr. 1207–08.

[6] Reppy was called by Respondent.

Reppy also stated that ''[i]t's always preferable to see * * * the patient face to face,'' and that he ''strongly urge[s] the patient to make a visit to the office here in Florida.'' *Id.* at 1130. Reppy further testified that he took a medical history on every patient, that he was convinced that each patient had a medical complaint, that there was a logical connection between the prescription he wrote and the complaint, and that there was a valid doctor-patient relationship with every person he issued a prescription for. *Id.* at 1164–65; see also *id.* at 1152.

On cross-examination, Reppy admitted that since the year 2000, he has not held a medical license in any State other than Florida. *Id.* at 1166. Reppy also admitted that the medical records of his telemedicine patients were ''usually'' sent to him by his patients rather than by the physician who had examined them. *Id.* at 1170–71. Reppy also admitted that sometimes the records for the patients that were referred to him by fedexmeds.com were provided by the Web site. *Id.* at 1171.

Reppy admitted that ''less than five percent'' of his ''telemedicine patients'' went to Florida to obtain a physical exam from him. *Id.* at 1174. Reppy also acknowledged that he ''generally did not'' consult ''on a regular basis'' with the physicians who had performed the physical examinations of his telemedicine patients, and that he did so ''less than once a day'' and only when he ''had specific questions.'' *Id.* at 1175. Finally, Reppy stated that when his patient's refills ran out, he required a new physical exam before issuing a new prescription only if the physical exam was ''too dated.'' *Id.* at 1176. The Government did not, however, ask Reppy at what point a physical exam becomes too dated.

The record establishes that during the period between October 1, 2005, and January 31, 2006, Respondent filled 11,830 prescriptions issued by Dr. Reppy, which totaled 1,275,400 dosage units of both controlled and non-controlled drugs. GX 99, at 13–16. Approximately 1.058 million of these dosage units (83%) were for drugs containing hydrocodone. *Id.* at 15–16. During this period, Reppy also authorized prescriptions totaling 41,651 dosage units of alprazolam, a schedule IV controlled substance, and approximately 84,000 dosage units of other controlled substances. *Id.*

Moreover, during this period, Reppy's prescribing accounted for approximately seventy-one percent of the prescriptions filled by Respondent and seventy percent of the dosage units dispensed by it. *Id.* at 8–11. Moreover, only 1094 (approximately 9.2%) of Reppy's prescriptions were for Florida residents. *Id.* at 13–14.

Respondent's dispensing log for December 2005 establishes that Reppy issued numerous controlled-substance prescriptions to persons resident in States where he was not licensed to practice. *See* GX 101, Excerpt 18. My review of the log found that during this month alone, Reppy issued new controlled-substance prescriptions to residents of Tennessee (89 Rxs), California (65 Rxs), Illinois (32 Rxs), North Carolina (18 Rxs), and Louisiana (14 Rxs).

In addition, during December 2005, Reppy issued numerous controlled-substance prescriptions to persons resident in States which clearly require that the prescribing physician perform a physical exam of a patient except in limited situations not applicable here. These States include California, Tennessee, Louisiana, and Indiana (9 new Rxs).

I take official notice [7] of the following State statutes: Cal. Bus. & Prof. Code §§ 2052 [8] (unlicensed practice) & 2242.1(a) (internet prescribing); Cal. Health & Safety Code § 11352(a) (prohibiting furnishing a controlled substance ''unless upon the written prescription of a physician * * * licensed to practice in this state''); 225 Ill. Comp. Stat. Ann. § 60/3 (licensure requirement), § 60/3.5 (prohibiting unlicensed practice); § 60/49 (listing acts constituting holding oneself out to the public as a physician); § 60/49.5 (requiring persons engaged in telemedicine to hold Illinois license); N.C. Gen. Stat. § 90–18 (''prescribing medication by use of the Internet or a toll-free telephone number, shall be regarded as practicing medicine'' in the State).

I also take official notice of the following state administrative rules: 844 Ind. Admin. Code § 5–3–3 (''issuing a prescription, based solely on an on-line questionnaire or consultation is prohibited'') & *id.* § 5–4–1 (prohibiting the issuance of a controlled-substance prescription ''to a person who the physician has never personally physically examined and diagnosed'' except for ''in institutional settings, on-call situations, cross-coverage situations, and situations involving advanced practice nurses with prescriptive authority practicing in accordance with standard care arrangements''); Tenn. Comp. R. & Regs. 0880–2.14(7) (prerequisites to issuing prescriptions); [9] & *id.* 0880–2.16 (requiring telemedicine license).[10]

I also take official notice of the Louisiana State Board of Medical Examiner's Statement of Position on ''Internet/Telephonic Prescribing,'' which was issued on May 24, 2000. According to the Louisiana Board, ''it is unlawful for a physician to prescribe medication, treatment or a plan of care generally if the physician has not examined the patient and established a diagnostic basis for such therapy.'' *Id.* at 2. After discussing the acts which establish a doctor-patient relationship, the Board further stated that ''an online or telephonic evaluation by questionnaire for an individual that a physician has never seen is inadequate.'' *Id.* at 2–3. The Board also explained that ''[a]n individual who issues a prescription or orders medication for an individual who is a resident of or located in Louisiana, who does not possess a Louisiana medical license or other authorization to practice medicine in this state, is necessarily engaged in the unauthorized practice of

[7] In accordance with the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. § 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen days of service of this order, which shall commence with the mailing of the order.

[8] In *Hageseth* v. *Superior Court*, 59 Cal. Rptr.3d 385 (Ct. App. 2007), the California Court of Appeal upheld the State's jurisdiction to criminally prosecute an out-of-state physician who prescribed a drug to a California resident over the internet, for the unauthorized practice of medicine.

[9] The text of this rule is discussed shortly below.

[10] I also take official notice of the Medical Board of California's Decision and Order in Jon Steven Opsahl, M.D., at 3 (Med. Bd. Cal. 2003) (revoking medical license and finding that ''a physician cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire and a telephone consultation with the patient, without a physical examination of the patient'' and that ''[a] physician cannot determine whether there is a medical indication for prescription of a dangerous drug without performing a physical examination''); *see also id.* at 17.

In addition, the Medical Board of California has issued numerous Citation Orders to out-of-state physicians for internet prescribing to State residents. *See*, e.g., Citation Order Harry Hoff (June 17, 2003); Citation Order Carlos Gustavo Levy (Nov. 30, 2001). It has also issued press releases announcing its position on the issuance of prescriptions by physicians who do not hold a California license. *See* Medical Board of California, Record Fines Issued by Medical Board to Physicians in Internet Prescribing Cases (News Release Feb. 10, 2003) (available at *http://www.mbc.ca.gov/NR_2003_02–10_Internetdrugs.htm*). I also take official notice of these materials.

medicine in contravention of the Medical Practice Act.'' *Id.* at 3.[11]

In addition to the prescriptions issued by Reppy, Respondent also filled numerous prescriptions issued by physicians who were affiliated with phoneconsultation.com. These physicians included Dr. Dora Fernandez, who was located in, and licensed by, the Commonwealth of Puerto Rico, *see* GX 58 at 3, 7, 16; and George Wallace Merkle, who was located in, and licensed by the State of Indiana. *See* GX at 64, at 5, 9–10. Neither of the files which Respondent kept on these two physicians contains any additional medical licenses. *See generally* GX 58 & 64. Moreover, Respondent produced no evidence to show that either of these physicians had additional medical licenses beyond those contained in their files. I therefore find that Dr. Fernandez was licensed only in Puerto Rico and Dr. Merkle was licensed only in Indiana.

According to the December 2005 Daily Audit Log, in just the last twelve days of the month, Dr. Fernandez issued new controlled-substance prescriptions to residents of various States where she was not licensed including Tennessee (35 Rxs), California (29 Rxs), Louisiana (26 Rxs), Illinois (9 Rxs), and North Carolina (8 Rxs). Dr. Fernandez violated the laws of these States by engaging in the unlicensed practice of medicine. Moreover, in light of the respective locations of Dr. Fernandez and her ''patients,'' it is most unlikely that she complied with the laws of Tennessee, California, Louisiana, and Indiana (8 new Rxs) regarding the prerequisites for prescribing a drug.

During December 2005, Respondent also filled new controlled-substance prescriptions issued by Dr. Merkle to residents of States where he was not licensed including California (17 Rxs), North Carolina (9 Rxs), and Louisiana (2 Rxs). Likewise, given the respective locations of Dr. Merkle (in Indiana) and his ''patients,'' it is highly improbable that he complied with either the regulations of his own State or the laws of California and Louisiana which require the performance of a physical examination before prescribing a drug.

Finally, Respondent also filled numerous controlled substances prescriptions issued by Dr. Elizabeth Jamieson, another Tampa-based physician, who is licensed only in Florida and Pennsylvania. *See* GX 63, at 3. During December 2005, Dr. Jamieson issued new controlled-substance prescriptions to residents of Tennessee (31 Rxs), California (23 Rxs), Illinois (6 Rxs), Louisiana (5 Rxs), and North Carolina (5 Rxs).[12]

The patient files also establish that Respondent filled numerous prescriptions issued by Dr. Wayne Starks of Detroit, Michigan, who was affiliated with ermeds.com. GX 101 (Excerpt 8, at 9998). While Dr. Starks held a DEA Registration, it expired on February 28, 2003, and Starks did not submit a new application until August 23, 2004, which he withdrew on March 21, 2005.[13] *See* GX 103; *see also* GX 93, at 12 (Stark's file maintained by Respondent). Starks was therefore without authority to prescribe controlled substances after February 28, 2003. GX 103.

The patient file for J.I., a resident of Alabama, indicates that Starks issued him prescriptions for 120 Lortab (10 mg.), a schedule III controlled substance containing hydrocodone and acetaminophen on January 9, 2004 (with two refills), April 16, 2004 (with two refills), June 24, 2004 (with no refills) and September 22, 2004 (with two refills). GX 101 (Excerpt 8, at 9997–99, 10008). Respondent filled each of these prescriptions including the refills. *See id.*

The patient file of K.Q., a resident of Texas, includes numerous prescriptions which Starks issued for Xanax (alprazolam) and Norco (hydrocodone/acetaminophen) after the expiration of his DEA registration and which Respondent filled. *See* GX 101 (Excerpt 9). More specifically, Starks issued K.Q. prescriptions for these drugs with refills on July 29, 2003; October 14, 2003; December 31, 2003; March 16, 2004; May 25, 2004; August 12, 2004; and October 27, 2004.[14] *See id.* at 3877, 3885, 3895, 3905, 3907, 3912, 3914, 3917, 3921, 3923, 3928, 3930. Respondent filled each of the new prescriptions and refilled these prescriptions numerous times.

The patient files also indicate that Respondent filled prescriptions issued by Dr. Richard Kienzle of Copperhill, Tennessee, a Tennessee-licensed physician. *See* GX 101 (Excerpts 6, 7, & 14); GX 60, at 2. More specifically, Kienzle issued T.H., a California resident, prescriptions for 90 Norco (10/325) with two refills on January 25, 2003; April 22, 2003; July 10, 2003; October 1, 2003; and 120 Norco on December 19, 2003. GX 101 (Excerpt 6 at 9744, 9738, 9732, 9726, & 9720). Respondent filled all of the prescriptions including the refills. *See generally id.* at 9720–44.

Respondent also filled several Vicodin prescriptions Kienzle issued to K.H., a Pennsylvania resident. Specifically, on December 7, 2003, and March 1, 2004, Kienzle prescribed 120 Vicodin ES (hydrocodone/apap 7.5/750) with two refills.[15] *Id.* (Excerpt 7, at 9585 & 9579), Respondent filled both the initial prescriptions and the refills. *See id.* On November 18, 2003, Kienzle issued to R.J., another Pennsylvania resident, prescriptions for 120 Norco (10/325) with two refills, and on February 2, 2004, a prescription for 120 Lortab (10/500) with two refills. *Id.* (Excerpt 14 at 4731, 4736). Respondent filled both the initial prescriptions and the refills. *Id.* The patient file also includes copies of documents entitled ''Fedxmeds Management Index,'' which were faxed to Respondent by Kienzle. *Id.* at 4674–75.

On July 20, 2005, pursuant to an Agreed Order with the Tennessee Board of Medical Examiners, Kienzle agreed to surrender his medical license. *See* GX 60, at 29. Kienzle also admitted that he had prescribed through several internet sites including FedexMeds.com, numerous dosage units of various controlled substances including compounds containing hydrocodone and codeine, as well as alprazolam, diazepam, and lorazepam and other scheduled drugs, to persons located in forty-six different States. *Id.* at 20. The Order also related that Kienzle had ''admitted in correspondence to treating

[11] The Board recognized that ''prescribing for a patient whom the physician has not personally examined may be suitable under certain, limited circumstances.'' Internet/Telephonic Prescribing, at 3 n. 7. According to the Board, these ''may include admission orders for a newly hospitalized patient, prescribing for a patient of another physician for whom the prescriber is taking the call or continuing medication on a short-term basis for a new patient prior to the patient's first appointment.'' *Id.* The Board also explained that it was not ''attempt[ing] * * * to limit true consultations between out-of-state physicians and Louisiana licensed physicians.'' *Id.* at 4. None of these exceptions applies to the conduct of the prescribing physicians in this case.

[12] A review of Respondent's January 2006 daily audit log shows that Reppy issued new controlled-substance prescriptions to residents of Tennessee (121 Rxs), California (72 Rxs), Illinois (30 Rxs), North Carolina (16 Rxs), Louisiana (15 Rxs), and Indiana (10 Rxs). Dr. Fernandez issued new controlled-substance prescriptions to residents of California (23 Rxs), Tennessee (22 Rxs), Louisiana (6 Rxs), North Carolina (5 Rxs), Illinois (5 Rxs), and Indiana (3 Rxs). Dr. Merkle issued new controlled-substance prescriptions to residents of California (43 Rxs), Louisiana (10 Rxs), Tennessee (9 Rxs), and North Carolina (6 Rxs).

[13] Starks has also submitted two additional applications, which are currently under review. GX 103.

[14] The Norco prescriptions were for 120 Norco 10/325 (hydrocodone/acetaminophen); the Xanax (alprazolam) prescriptions were either for 45 (2 mg.) tablets or 30 (1 mg.) tablets.

[15] The record also includes copies of a document entitled ''Fedxmeds Management Index'' for K.H., which indicate that they were faxed to Respondent from Dr. Kienzle on December 7, 2003, and February 3, 2004. GX 101 (Excerpt 7, at 9530–31).

via the internet or other electronic means, approximately one thousand eighty four (1,084) patients by and through his affiliation with'' two websites which included FedexMeds.Com. *Id.* at 20–21. Kienzle also admitted that ''as a matter of routine course, [he] utilized 'telephone consultations' conducted in reliance on data derived from the * * * FedexMeds.com internet database[ ], to speak with patients whose credibility and authenticity he could not verify, and whose symptoms he could not evaluate through tactile examination, visual observation, or through other means of clinical evaluation required by the standard of care.'' *Id.* at 23.

Kienzle further admitted that his internet prescribing violated various provisions of the Tennessee Medical Examiners Practice Act, including prohibitions on unprofessional conduct and dispensing controlled substances in violation of State or Federal law. *Id.* at 24–28. Most significantly, Kienzle admitted that his internet prescribing violated the Board's Rule 0880–2–.14(7), which sets forth the ''prerequisites to issuing prescriptions or dispensing medications in person, electronically, and over the internet.'' *Id.* at 27. This provision states that it is ''a prima facie violation'' of the State's Medical Practice Act:

> for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed * * * an appropriate history and physical examination[.] [16]

GX 60, at 27 (quoting Tenn. Comp. R. & Regs. 0880–2–.14(7)).

The Government also introduced evidence showing that Respondent was engaged in the compounding of large quantities of controlled substances. More specifically, Respondent was purchasing hydrocodone bitartrate powder and compounding it with either acetaminophen or dextromethorpan hydrobromide in various combinations. *See* GX 37 (invoices for hydrocodone bitartrate powder); *see also* GX 36 (compounding log). Moreover, Respondent was also compounding a formulation of phentermine and lorazepam (both schedule IV controlled substances, *see* 21 CFR 1308.14). GX 36, at 16. The run size of the compoundings was 7500 capsules. *See generally* GX 36.

In another proceeding, Mr. Decker, Respondent's pharmacist-in-charge, testified that approximately one-third of the drugs it dispensed were compounded. *See* Resp. 25, at 177. Mr. Decker also testified that Respondent never had on hand ''more than 15 days'' supply of compounded drugs. *Id.* at 178. Mr. Decker further stated in an affidavit that the drugs were ''compounded only to the extent that they are prescribed by the physician, and to fulfill remaining refills as indicated on the original prescription.'' GX 70, at 1. Respondent is registered as a retail pharmacy and not as a manufacturer. *See* GX 1.

The record further establishes that Respondent violated Kentucky law by failing to report its dispensing of controlled substances to Kentucky residents through the State's electronic monitoring system (KASPER). *See* GX 85 (affidavit of Jennifer Shearer, Agent Manager, Kentucky Bureau of Investigation (KBI) (citing KRS §§ 218A.202 & 315.0351)). More specifically, Agent Shearer recounted that on June 1, 2006, a KBI agent received information from the United Parcel Service that it was ''shipping 'a lot' of packages'' that came from Respondent. GX 85, at 1. Upon receiving this information, Agent Shearer contacted the Inspector General's office of the Kentucky Cabinet of Health Services and determined that Respondent had not filed its KASPER reports since April 2005. *Id.*

On June 9, 2006, KBI agents obtained a search warrant ''for any and all packages being shipped by [Respondent] by [UPS] from June 5, 2006–June 9, 2006.'' *Id.* The agents subsequently seized fifty-four bottles of prescription drugs which included the controlled substances alprazolam, diazepam, clonazepam and hydrocodone. *Id.* On the same date, Agent Shearer was contacted by an employee of Respondent who wanted to know why its shipments had been seized. *Id.* Agent Shearer told the employee that the packages had been seized because Respondent ''had not been reporting to KASPER.'' *Id.* Agent Shearer also advised Respondent's employee that the prescriptions it was dispensing were illegal because ''none of the Kentucky residents * * * had ever seen'' the prescribing physician and ''there was no physician/patient relationship.'' *Id.* Agent Shearer then told the employee that Respondent must stop shipping to Kentucky residents until it complied with the State's law.[17]

Thereafter, KBI agents received information that Respondent had begun shipping prescription drugs under the name of ''Makes and Models Magazine,'' another business owned by Ballinger. *Id.* at 2; *see also* GX 84, at 5; GX 87 at 5. Accordingly, on June 16, 2006, KBI agents obtained another search warrant ''for any and all packages being shipped by [Respondent] and Makes and Models Magazine by [UPS] from June 9, 2006–June 16, 2006.'' GX 85, at 2. Upon executing the warrant, KBI agents seized twelve bottles of drugs which contained alprazolam, diazepam, and hydrocodone. *Id.* Makes and Models Magazine is not licensed as an out-of-state pharmacy under Kentucky law. *Id.*

In another proceeding, Mr. Decker (Respondent's Pharmacist-in-Charge) testified that Respondent had shipped under the ''Makes and Models'' name based on the suggestion of its UPS account representative. Resp. Ex. 25, at 171. In this testimony, Decker claimed that Respondent's personnel thought that the packages had been stolen and were unaware that they had been seized by the KBI. *Id.* at 174. Decker admitted, however, that Respondent did not report the purported thefts to either DEA or the KBI. *Id.* at 174–75; *see also* 21 CFR 1301.76(b) (requiring reporting of a theft of controlled substances).

Based on Respondent's failure to report the purported thefts and Agent Shearer's statement that on June 9, 2006 (the date the first warrant was executed), she was contacted by an employee of Respondent who wanted to know why the packages had been seized, I reject Respondent's claim that the reason it shipped controlled substances under the ''Makes and Models'' label was to prevent them from being stolen. *See* Resp. Proposed Findings at 21. Instead, I find that Respondent knew that the packages had

[16] The rule also requires that the physician has ''[m]ade a diagnosis based upon the examination and all diagnostic and laboratory tests consistent with good medical care,'' ''[f]ormulated a therapeutic plan and discussed it, along with the basis for it,'' and ''[i]nsured availability of the physician or coverage for the patient for appropriate follow-up care.'' GX 60, at 28.

[17] In similar vein, the record also contains a copy of various documents of the Wyoming Board of Pharmacy. *See* GX 41, at 1. These include a March 31, 2005 letter to Respondent notifying it that the Board had become aware that it had dispensed a prescription issued by Dr. Reppy to a Wyoming resident and expressing that the Board had ''strong reasons to believe that no doctor/patient relationship has been established between [the resident] and the prescribing physician * * * other than via the internet,'' and that ''[a] prescription * * * dispensed based solely on a web-based questionnaire without establishing a valid doctor/patient relationship is considered to be a violation of the Wyoming Pharmacy Act.'' *Id.* The letter further requested that Respondent ''cease dispensing to Wyoming residents immediately.'' *Id.* The record also includes a copy of an April 8, 2005 letter from the Wyoming Board to the Florida Department of Health filing a complaint against Respondent for its dispensing to this resident. *Id.* at 12.

been seized by the KBI and that it used the ''Makes and Models'' label to circumvent Kentucky law.

The record also includes files that Respondent maintained on the various prescribing physicians. The files typically include copies of each physician's state license and DEA registration. *See generally* GXs 55–65. Most of the files also include a copy of an affidavit and/or letter in which the physician was required to state that ''any prescription sent to [Respondent] will be for a legitimate medical purpose within the usual course of professional practice and based on [a] legitimate patient-physician relationship.'' *See, e.g.*, GX 56, at 74 (Reppy).

These affidavits and/or letters also required the physicians to state that their practice had policies and procedures in place to satisfy the following criteria:

> Our records include a positive identification of the patient.
>
> The patient's medical complaint has been verified.
>
> The patient's chart includes copies of prior medical records.
>
> An extensive physician interview and consultation has been accomplished.
>
> That if an in-person examination was not possible that we have supervised and directed an examination by a consulting medical professional, for which a copy is in the patient file.
>
> That in review of all of the above criteria contained in our medical file we have determined the appropriateness of medications and have issued a prescription based upon our patient/physician relationship.

Id.

The Expert Testimony

The Government called as an expert witness, Carmen Catizone, Executive Director, National Association of Boards of Pharmacy. GX 81. Mr. Catizone is a registered pharmacist in Illinois and holds a Bachelor of Science degree in pharmacy and a Master of Science degree in pharmacy administration and has worked as a pharmacist and as a pharmacist-in-charge. *Id.* at 2–5. Mr. Catizone also holds an honorary Doctor of Pharmacy license from the Oklahoma State Board of Pharmacy. *Id.* Mr. Catizone has been qualified as an expert in administrative proceedings in all States except Alaska and has previously been qualified as an expert in the United States District Court for the District of Minnesota and in other DEA proceedings. Tr. 313. The Government offered Mr. Catizone ''as an expert witness in pharmacy practice, pharmacy regulation, pharmacy legislation and internet pharmacy practices.'' *Id.*

Mr. Catizone testified that under ''all state pharmacy practice acts,'' a ''pharmacist is responsible to ensure that the prescription is valid, has been written within the scope of practice for that prescriber, [that] the prescriber is appropriately licensed[,] and that [the] prescription is valid for [the] patient's disease, symptoms or conditions.'' *Id.* at 323. Mr. Catizone also testified that for a prescription to be valid under federal and state laws, it must be based on ''a bona fide relationship between the prescriber and the patient.'' *Id.* at 322.

Mr. Catizone also reviewed Respondent's daily audit logs for the periods March 30–31, 2005, and November 9 through December 9, 2006 (GXs 18 & 39). Based on his review, Mr. Catizone opined that the prescriptions showed ''disturbing patterns.'' Tr. 333. Most significantly, Mr. Catizone observed that ''the overwhelming majority of prescriptions [were] written by one physician, and that physician is located in [a] different state[] than all of the patients.'' *Id.* Moreover, ''the overwhelming prescription drug written for is hydrocodone, which you do not see that volume or that selectivity in any other retail pharmacy that I'm aware of.'' [18] *Id.*

Mr. Catizone testified that he had not seen a dispensing mix like Respondent's ''except for internet pharmacies that we've studied in the past that have been involved in illegal activities involving controlled substances.'' *Id.* at 334. Mr. Catizone further testified that he had ''not seen these types of prescribing patterns for physicians unless they were pain medication specialists * * * except in instances where we've looked at internet pharmacies that were operating illegally and prescribing controlled substances illegally.'' *Id.* at 335.

Finally, Mr. Catizone testified that based on the dispensing records, Respondent had not met its corresponding responsibility to ensure that the prescriptions it filled had been issued in the usual course of professional practice. *Id.* at 343–44. Moreover, based on his review of the dispensing records and the fact that Reppy was licensed only in Florida, Mr. Catizone further testified that Respondent had not fulfilled its responsibility to ensure that that there was sufficient evidence of a legitimate doctor-patient relationship before filling Dr. Reppy's prescriptions. *Id.* at 344.

On cross-examination, Mr. Catizone explained that he formed his opinion solely on the basis of the dispensing records and had not done any further investigation to determine whether Reppy's prescriptions were issued pursuant to a legitimate doctor-patient relationship or whether Reppy treated chronic pain patients. *Id.* at 352–53. Mr. Catizone also testified he had not done any similar investigation with respect to the other doctors whose prescriptions were filled by Respondent. *Id.* at 353–54. Mr. Catizone further stated that his opinion was based strictly on ''the numbers and the prescribing patterns and the location of the patients.'' *Id.* at 355.

Mr. Catizone agreed that under federal and state laws it is not ''a necessary prerequisite to the issuance of a prescription that the prescriber be the person who conducted the physical examination.'' *Id.* at 355–56; *see also id.* at 359–61. He further asserted, however, that ''[t]he federal requirement is that there's a bona fide relationship. And if that relationship can be established as a referral from another prescriber or physician that's made that examination,'' then the prescriber does not have to have performed the physical examination. *Id.* at 356. Clarifying his testimony, Mr. Catizone asserted that there had to be a relationship between the examining physician and the prescriber, ''as well as between the patient and the initial physician who has performed the medical examination. If care is shifted to the other physician, then that physician also has to have a relationship with that patient to ongoingly prescribe medications.'' *Id.* at 357.

Relatedly, Mr. Catizone acknowledged that under Florida law, a physician may issue a prescription even though he did not physically examine the patient. *Id.* at 359. Mr. Catizone then testified that if one physician ordered a diagnostic test and the results of those tests were sent to another practitioner for review and that practitioner took a medical history and talked to the patient, the practitioner could then issue a prescription. *Id.* at 361.

On further cross-examination, Mr. Catizone was shown Government Exhibit 86 which memorialized several interviews conducted by a Diversion Investigator of Dr. Reppy's patients. In some instances, these persons told the DI that they had been required to obtain a physical exam from another physician or that they had at some point been physically examined by Reppy. GX 86 at 2, 10, & 12. Others, however, told the investigator that they had not been seen by Reppy and had not been required to obtain a physical exam. *Id.* at 4, 6–9. While Mr. Catizone acknowledged that it was ''important to have the entire picture,'' he also noted that in some instances the ''patients'' could not even recall the prescribing physician's name.

Tr. 366; *see also* GX 86 at 3, 7 & 8. Mr. Catizone then added that this exhibit ''substantiate[d] my contention * * * that the practices were not legal and not meeting the standards of care.'' Tr. 367.

Finally, Respondent's counsel asked Mr. Catizone whether his conclusion that Respondent had dispensed invalid prescriptions would be altered by the fact that Respondent had verified that the prescriber was licensed and had a DEA registration, that ''there had been direct communication between the patient and the physician,'' and that it had obtained ''an affidavit from the physician attesting to the existence of a physician/patient relationship.'' *Id.* at 371–72. Mr. Catizone testified that these facts would not lead him to change his testimony ''unless [it] was documented for every single patient.'' *Id.* at 372.

Respondent excepted to the testimony of Mr. Catizone, asserting that he ''is not competent to offer any expert opinion, much less an opinion on the requirements of a valid doctor-patient relationship.'' Resp. Exceptions at 4. Respondent asserts that Mr. Catizone is ''little more than a fraud'' because he ''refers to himself as 'Dr. Catizone''' when ''he has never earned a doctorate degree nor even been conveyed with an honorary one from an academic institution,'' but rather, holds an ''honorary title'' granted by the Oklahoma Board of Pharmacy. *Id.* at 4–5.

The short answer to Respondent's contention is that whether Mr. Catizone can properly call himself Dr. Catizone is irrelevant because what matters are his qualifications to testify as an expert. And contrary to Respondent's contention, a witness can be qualified as an expert by virtue of his skill, training, knowledge, education or experience. *Cf.* F.R.E. 702. Accordingly, Mr. Catizone's lack of a degree at the doctoral level does not disqualify him from testifying as an expert. Nor does the fact that he ''has not worked in a clinical pharmacy setting since 1995.'' Resp. Exceptions at 5. Mr. Catizone's expertise in pharmacy practice is amply established by his prior work as a practicing pharmacist, his professional experience as the Executive Director of the National Association of Boards of Pharmacy, and his extensive writings. I therefore find that Mr. Catizone was competent to testify as to the scope of a pharmacist's obligations under Federal law and the pharmacy practice acts of the various States.

Respondent also excepted to Mr. Catizone's testimony on the ground that there is no evidence that he has ''received any medical training or has ever been involved in patient care in any form which would provide him a basis to opine on the requirements of a doctor-patient relationship.'' *Id.* Relatedly, Respondent argues that the Government has not shown ''that Mr. Catizone has received any legal training which would qualify him to interpret uncited, yet apparently relied upon, court cases regarding same.'' *Id.*

I need not resolve this issue because I decline to adopt the ALJ's reasoning as to why the prescriptions written by Dr. Reppy and the other physicians were not based on valid doctor-patient relationships. The States have the primary responsibility for regulating the practice of medicine. I therefore conclude that the appropriate course in determining whether Dr. Reppy and the other physicians prescribed pursuant to valid doctor-patient relationships is to examine the specific legal authorities of the various States.[19]

The Government also introduced the declaration of George Van Komen, M.D., the former President of the Federation of State Medical Boards (FSMB), as well as Dr. Van Komen's testimony in *In re Trinity Health Care Corp.,* 72 FR 30849 (2007). *See* GXs 78 & 83. In his written declaration, Dr. Komen explained the standard for establishing a legitimate doctor-patient relationship under the FSMB's guidelines:

> The standard in terms of forming a legitimate doctor-patient relationship is that there needs to be a documented face-to-face history and physical * * * evaluation of the patient, and then if this patient chooses to receive further consultative work or be established with a physician who practices on the Internet, that the Internet physician first of all and most importantly needs to be identified, and he needs to have a license in the state in which the patient resides.
>
> * * * * *
>
> And we also feel that [the] primary care doctor who did the history and physical needs to stay in touch with the patient, even though the patient might be seeking further consultation from another physician through the Internet.

GX 78, at 14–15.[20]

In *Trinity Healthcare,* Dr. Van Komen testified, however, that ''under certain circumstances,'' a physician can write a lawful prescription without ever meeting the patient. GX 83 (Tr. 608). Besides the situation where a physician is covering for another physician, Dr. Van Komen explained that under the FSMB guidelines, ''there are physicians who have internet practices, and they are provided information from the physician who the patient had previously seen. And they provide them with information through a request of the patient's medical records, and the patient themselves usually do not provide those medical records.'' *Id.* Continuing, Dr. Van Komen explained: ''[s]o there [are] no alternate medical records by the patients themselves and then the physician who has an internet practice uses that history and physical from what I call the primary care physician with whom the patient has had face-to-face contact.'' *Id.* at 609.

Dr. Van Komen's testimony raises a strong suspicion that Reppy's prescriptions were not issued pursuant to a valid doctor-patient relationship. But neither Dr. Van Komen's declaration nor his *Trinity Health Care* testimony addressed whether the laws of Florida (where Dr. Reppy was located) or any other State where the prescribers or the patients were located, prohibit a physician from prescribing because he received the medical records from the patients themselves. [21]

Respondent also put on an expert witness, Dr. Thomas E. Johns. Dr. Johns holds a Doctor of Pharmacy degree and serves as the Assistant Director, Clinical Pharmacy Services, Department of Pharmacy, Shands at the University of Florida, a teaching hospital which is affiliated with the University of Florida. RX 28, Tr. 1256. Dr. Johns also teaches at the University of Florida College of Pharmacy as an adjunct faculty member. Tr. 1256. Dr. Johns has responsibilities related to the institution's compliance

[19] This is not to say that Mr. Catizone is not competent to testify in this area. A pharmacist has a ''corresponding responsibility'' to ascertain whether a prescription has been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Determining whether a physician has acted in accordance with this standard necessarily requires that the pharmacist have knowledge of the applicable State's law. *See United States* v. *Smith,* 2006 WL 3702656 (D. Minn 2006).

[20] In his written declaration, Dr. Van Komen further explained that ''[t]here is no way to detect abuse or monitor the appropriate treatment or care of a patient by reviewing an online questionnaire, because a doctor has no way of knowing that the person that filled out that questionnaire filled it out honestly. If I had to describe a drug addict by using one word, the word I would use is 'dishonest.''' GX 78, at 17. Dr. Van Komen did not, however, address the legitimacy of prescribing using the methods employed by Dr. Reppy.

[21] Dr. Van Komen's testimony also does not establish at what point a physical exam becomes too dated to be relied upon. Finally, while Dr. Van Komen also testified in Trinity Healthcare that ''[t]here is absolutely no way that you can continue to prescribe controlled substances without a review of how the patient is doing[,] [a]nd that cannot be evaluated without a face-to-face confrontation,'' GX 83 (Tr. 579), his testimony did not specify at what point this encounter must occur. I therefore do not make any findings as to whether Reppy issued unlawful prescriptions because he relied on physical examinations which were too dated or continued to prescribe without requiring an in-person follow-up examination.

with applicable pharmacy laws and regulations.[22] *Id.* 1260–61.

On direct examination, Dr. Johns asserted that both the Agency's 2001 guidance document on dispensing controlled substances over the internet [23] and the Pharmacist's Manual were unclear regarding the scope of a pharmacist's corresponding responsibility under 21 CFR 1306.04(a). Tr. 1273. Dr. Johns testified that if a prescription creates a suspicion that it has been issued ''for an illegitimate purpose or that the [doctor-patient] relationship is not valid,'' then the pharmacist should call the doctor. *Id.* at 1275. Dr. Johns further asserted that if the physician affirms that there ''is a valid doctor/patient relationship,'' then ''no further action is really needed or warranted on the part of the pharmacist.'' *Id.* Dr. Johns also testified that the DEA Pharmacist Manual states that the ''frequency and volume [of prescriptions] in and of itself is not indicative of fraud or abuse.'' *Id.* at 1277; *see also id.* at 1278.[24]

Dr. Johns further testified that in his experience, it is not ''the usual and customary practice in the distributive pharmacy setting to verify the existence of a doctor/patient relationship before filling a prescription.'' *Id.* at 1280 (quoting question of Respondent's counsel). Dr. Johns also testified that it is not ''the usual and customary practice'' in the distributive pharmacy setting to verify the prescriber's medical license and DEA registration. *Id.* Finally, Dr. Johns testified that it is not the responsibility of a pharmacist to ''second guess'' a prescribing practitioner's diagnosis. *Id.*

On cross-examination, Dr. Johns admitted that in preparing for his testimony, he was only ''actually shown the first or second page of a prescription log'' and nothing ''other than that.'' *Id.* at 1286; *see also id.* at 1289. Dr. Johns further admitted that he had never been in a pharmacy which asked physicians to send in the medical records of its customers as Respondent did. *Id.* at 1286–87; *see also* GXs 29 & 30 (patient files). Dr. Johns further stated that he could not think of a reason why a retail pharmacy would require a physician to send in a customer's medical records. Tr. 1286–87.

Dr. Johns further testified that he had never visited Respondent, id. at 1289, and that his knowledge regarding Respondent's actual operations was based on the Show Cause Order and a document ''which described [its] business model.'' *Id.* at 1290. Dr. Johns also acknowledged that volume in combination with other factors could raise a suspicion that a particular physician's prescriptions were not legitimate. *Id.* at 1292. Dr. Johns then admitted that ''it could'' create a suspicion if a physician was located in Puerto Rico and issuing eighty new prescriptions a day to persons who were not located in Puerto Rico. *Id.* at 1293. He also acknowledged that ''if the pharmacist knew that patients were being solicited over the internet [it] would certainly raise a red flag to that pharmacist that there could be an invalid doctor/patient relationship.'' *Id.*

Relatedly, Dr. Johns testified that if a prescription indicated that it was faxed from a website, it would make him ''curious'' as to what the website was engaged in, *id.* at 1311, and that it would create a suspicion that the drugs would be diverted. *Id.* at 1317. Dr. Johns also admitted that it is not the usual course of practice for a pharmacy to solicit physicians to send their prescriptions to it and that it is inappropriate for a pharmacy to do so. *Id.* at 1296–98.

Dr. Johns maintained, however, that it was ''probably'' not inappropriate to fill a prescription for controlled substances issued by a practitioner whose DEA registration had expired even if the pharmacy had a copy of the expired registration on file. *Id.* at 1300. Subsequently, Dr. Johns admitted that while a pharmacist is not required to ''proactively * * * determine whether the physician has [a] valid DEA number,'' if ''something raises a suspicion of irregularity, then perhaps a more thorough investigation'' is required. *Id.* at 1301.

The Government then asked whether it would be suspicious ''if a physician was practicing medicine in a jurisdiction where [he wasn't] licensed?'' Dr. Johns answered: ''If [he] knew that [he wasn't] licensed in that jurisdiction.'' *Id.* at 1302. Dr. Johns then admitted that a pharmacy must know not only a State's law regarding pharmacy practice, but also the law of the State where the dispensing is occurring regarding the requirements for a lawful prescription. *Id.* Relatedly, Dr. Johns testified that a pharmacy has ''a professional obligation to know the law.'' *Id.* at 1303. Finally, Dr. Johns testified that if he ''knew that [a] physician was away from his practice and prescriptions were being issued under his name, [he] would be suspicious.'' *Id.* at 1320.

Discussion

Section 304(a) of the Controlled Substance Act (CSA) provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). Section 304(d) further provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

In determining the public interest, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.* § 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall v. DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this case, I conclude that factors two and four are dispositive and establish that Respondent's continued registration would ''be inconsistent with the public interest.'' 21 U.S.C. 823(f). I also find unpersuasive Respondent's contention that it is attempting to comply with the law. Accordingly,

[22] As is the case with Mr. Catizone, Dr. Johns does not actively engage in the actual dispensing of prescription drugs. Tr. 1271.

[23] *See* DEA, Dispensing and Purchasing Controlled Substances over the Internet, 66 FR 21181 (2001). The guidance document is included in the record as GX 6.

[24] Dr. Johns also addressed the allegation that Respondent should not have filled prescriptions that lacked the patient's address. Tr. at 1279. Dr. Johns testified that while there are certain items of information that appear on a prescription which a pharmacist ''cannot change'' even in consultation with the physician, ''the pharmacist is authorized to fill in the patient's address if it's not on the prescription.'' *Id.* DEA's regulations are, however, to the contrary. *See* 21 CFR 1306.05(a).

Respondent's registration will be revoked and its pending application for renewal of its registration will be denied.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Its Compliance With Applicable Federal, State, and Local Laws

Under DEA's regulation, a prescription for a controlled substance is unlawful unless it has been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Moreover, while ''[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a corresponding responsibility rests with the pharmacist who fills the prescription.'' *Id.* Accordingly, ''the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

DEA has interpreted the regulation ''as prohibiting a pharmacist from filling a prescription for controlled substances when he either 'knows or has reason to know that the prescription was not written for a legitimate medical purpose.''' *Trinity Health Care Corp.,* 72 FR 30849, 30854 (2007) (quoting *Medic-Aid Pharmacy,* 55 FR 30043, 30044 (1990)); *see also Frank's Corner Pharmacy,* 60 FR 17574, 17576 (1995); *Ralph J. Bertolino,* 55 FR 4729, 4730 (1990). *See also United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted).

As the ALJ recognized, one of the primary issues in this case is whether the prescriptions Respondent filled were issued by physicians pursuant to valid doctor-patient relationships. Reasoning that ''[t]here is no evidence * * * that any physicians who had examined Respondent's customers had referred them to the physicians who prescribed to them and sent the prescriptions to Respondent to be filled,'' the ALJ concluded that ''there was no physician-patient relationship between Dr. Reppy—or any of the other physicians * * * who issued prescriptions that Respondent filled'' and its customers. ALJ at 66. The ALJ thus held that the prescriptions were not issued pursuant to valid doctor-patient relationships. *Id.*

The ALJ did not, however, cite any legal authority for this holding. Instead, the ALJ apparently based her holding on Mr. Catizone's testimony that ''if the prescriber has not performed the physical examination, then there must be some relationship between the person who did conduct the examination and the physician who issues the prescription.'' *Id.* at 65.

Mr. Catizone's testimony was not supported by reference to the laws, regulations, or decisions (either judicial or administrative) of any particular State. While Mr. Catizone's testimony appears to be consistent with the guidance of the American Medical Association, *see* GX 3, at 5; the AMA's statement does not have the force and effect of law absent its adoption by competent state authorities. Moreover, this Agency has not promulgated such a rule through either notice-and-comment rulemaking or adjudication.

That there is no Federal standard requiring a referral or consultative arrangement between the examining and prescribing physicians does not mean that the prescriptions issued by Dr. Reppy and the other physicians were lawful under Federal law. As the 2001 Guidance Document explained, the CSA looks to state law in determining whether a physician has established a valid doctor-patient relationship. *See* 66 FR at 21182–83. Moreover, the CSA also requires that a physician be acting ''in the usual course of * * * professional practice'' in order to issue a lawful prescription. 21 CFR 1306.04(a). Finally, as noted above, the public interest inquiry mandates that a registrant's compliance with applicable state laws be considered. 21 U.S.C. 823(f)(4).

As found above, in December 2005, Respondent filled numerous prescriptions issued by prescribers who were engaged in the practice of medicine without the required state licenses in violation of various state laws. For example, even though Dr. Reppy was licensed only in Florida, he issued new controlled-substance prescriptions to residents of California, Tennessee, Illinois, North Carolina, and Louisiana. Both Dr. Fernandez (who was licensed only in Puerto Rico) and Dr. Jamieson (who was licensed only in Florida and Pennsylvania) also issued new controlled-substance prescriptions to residents of these same States. Finally, Dr. Merkle, who was licensed only in Indiana, issued new controlled substance prescriptions to residents of California, North Carolina, and Louisiana.

A physician who engages in the unauthorized practice of medicine is not a ''practitioner acting in the usual course of * * * professional practice.'' 21 CFR 1306.04(a). Under the CSA, the ''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance.'' 21 U.S.C. 802(21). *See also* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As the Supreme Court has explained: ''In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice.'' *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (emphasis added). A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA. *Cf.* 21 CFR 1306.03(a)(1) (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession[.]'').

Respondent had ample reason to know that these prescriptions were unlawful under both Federal and state law. As the California Court of Appeal has noted: the ''proscription of the unlicensed practice of medicine is neither an obscure nor an unusual state prohibition of which ignorance can reasonably be claimed, and certainly not by persons * * * who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine.'' *Hageseth* v. *Superior Court,* 59 Cal. Rptr.3d 385, 403 (Ct. App. 2007). Moreover, as Respondent's expert admitted, an entity which voluntarily engages in commerce by shipping controlled substances to persons located in other States is properly charged with knowledge of the laws regarding the practice of medicine in those States. *See* Tr. at 1302.

While this allegation was included in the Show Cause Order and litigated, *see* ALJ Ex. 1, at 3; in its brief, Respondent largely sweeps it under the rug.[25] *See*

[25] In its proposed findings, Respondent asserts that ''there is a conflict in California law'' regarding

Continued

Resp. Prop. Findings at 22. I find, however, that Drs. Reppy, Jamieson, Fernandez, and Merkle, repeatedly issued unlawful prescriptions when they prescribed controlled-substances to residents of States where they were not licensed to practice medicine. Respondent knew the physicians were generally licensed in only one State and yet dispensed the prescriptions. I thus find that Respondent had ample reason to know that these prescriptions were unlawful, that it deliberately ignored these state licensure requirements, and thus, that it repeatedly violated the CSA. *See* 21 CFR 1306.04(a).

Ignoring these patent violations of both Federal and state laws, Respondent contends that Dr. Reppy and the other physicians were engaged in the legitimate practice of ''telemedicine'' because ''there is no requirement that the prescribing physician personally conduct a physical examination of a patient for a valid doctor-patient relationship to exist.'' Resp. Proposed Findings and Conclusions of Law at 26 (¶ 143). In support of its contention, Respondent argues that the practitioners whose prescriptions it filled ''required, at a minimum, the patient to provide recent medical records, including a physical examination, to substantiate the objective portion of the diagnosis, prior to the telephonic consultation with the doctor.'' *Id.*

I also reject this contention. Even if Dr. Reppy's (and Dr. Jamieson's) conduct established a valid doctor-patient relationship under Florida law (a dubious proposition at that, *see* GX 56, at 53–54), both physicians violated the laws of other States which clearly require that the prescriber personally perform the physical exam except in limited situations not applicable here. Dr. Reppy violated the laws of California, Tennessee, Indiana, and Louisiana. Dr. Jamieson (and Dr. Fernandez) violated the laws of California, Tennessee, and Louisiana. Moreover, Dr. Merkle violated the laws of California, Tennessee, and his own State, Indiana.[26]

In its exceptions, Respondent argues that it is the victim of ''unclear'' guidance because the Agency's regulations and Practitioner's Manual do not state ''that the *prescribing physician* [must] personally conduct a physical examination.'' Resp. Exceptions at 9–10. This argument misses the mark because as the 2001 Guidance Document recognized, whether certain acts by a physician establish a bonafide doctor-patient relationship is a question of state law, *see* 66 FR at 21182–83, and as explained above, some States allow a physician to prescribe without performing a physical exam in various, but limited, circumstances.

The rules (and/or interpretations) adopted by the States of California, Tennessee, Indiana, and Louisiana (among others) requiring that a prescribing physician perform the physical exam were issued well in advance of the conduct at issue here.[27] These rules and interpretations were also clear enough to put Respondent on notice that the prescriptions being issued to residents of those States were unlawful.

Respondent argues that before it filled prescriptions, it ''required the physicians to execute an affidavit attesting that the physician issued their prescriptions for a legitimate medical purpose within the usual course of their practice and based on a valid physician-patient relationship.'' Resp. Proposed Findings at 4 (¶ 15, citing Resp. Ex. 3 & GX 55, at 17–19). Relatedly, Dr. Johns testified that it is not ''the usual and customary practice in the distributive pharmacy setting to verify the existence of a doctor/patient relationship before filling a prescription.'' Tr. 1280 (quoting Resp.'s Counsel).

As for Dr. Johns' testimony, Respondent was not engaged in ''the usual and customary practice of'' pharmacy. Rather, it was filling prescriptions that were issued by physicians who were frequently located nowhere near their ''patients.'' Indeed, that is undoubtedly why Respondent required the physicians to sign letters attesting to the purported validity of their doctor-patient relationships.

The letters/affidavits were not a bona fide method of determining the legitimacy of the prescriptions. Rather, they were a sham, and as such, do not immunize Respondent from its obligations to know the laws of each State into which it sent controlled substances and to independently determine whether the physicians were in compliance with the States' licensure requirements and specific standards for issuing treatment recommendations and prescribing controlled substances.

I therefore also find that Respondent repeatedly violated 21 CFR 1306.04(a) by filling numerous prescriptions that it had reason to know were issued by physicians who had not established valid doctor-patient relationships under the laws of various States. Both this finding and my previous finding regarding Respondent's filling of prescriptions issued by unlicensed physicians provide independent and adequate grounds to conclude that Respondent has committed acts ''inconsistent with the public interest,'' and which warrant the revocation of its registration. 21 U.S.C. 824(a)(4).

While this conduct provides reason alone to revoke Respondent's registration, the record also contains substantial evidence of additional violations. As found above, Respondent filled numerous prescriptions issued by Dr. Starks well after his DEA registration expired on February 28, 2003. Moreover, Respondent did so even though it had on file a copy of Respondent's registration. For example, Starks issued new prescriptions (with refills) for Lortab, which Respondent filled, to J.I. of Alabama on January 9, 2004, April 16, 2004, June 24, 2004, and September 22, 2004. Starks also issued new prescriptions (with refills) for Norco and Xanax, which Respondent filled to K.Q. of Texas, on seven separate occasions between July 29, 2003, and October 27, 2004.

Under DEA regulations, a prescription for a controlled substance can be issued only by a practitioner who is properly registered.[28] 21 CFR 1306.03(a). The prescriptions Starks issued after the expiration of his registration were therefore illegal.

Regarding this allegation, Dr. Johns testified that it was ''probably'' not inappropriate to fill a controlled-substance prescription issued by a practitioner whose DEA registration had expired even though the pharmacy had a copy of the expired registration on file. Tr. 1300. This testimony is nonsense. While filling a prescription issued by a practitioner whose registration has recently expired might be excusable, Respondent's repeated filling of

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the legality of an unlicensed physician's issuance of a prescription to a resident of the State. Resp. Prop. Finding at 22. (¶ 120). Respondent does not, however, cite to any statutory language to support its claim of conflict, but rather, relies on a document it created which the Government entered into evidence. *See id.* (citing GX 7, at 1). I therefore reject this contention.

[26] As found above, Respondent also filled numerous controlled-substance prescriptions issued by Dr. Kienzle, a Tennessee-licensed physician who ultimately surrendered his medical license for prescribing over the internet.

[27] California adopted its internet prescribing statute in 2000, *see* Cal. Bus. & Prof. Code § 2242.1 (West 2007). Tennessee published its proposed rule on internet and telephonic prescribing on September 26, 2000; while the rule was subsequently renumbered it became effective shortly thereafter. *See* 26 Tenn. Admin. Reg. 62–63 (Oct. 2000). Likewise, on May 24, 2000, Louisiana issued its position statement on internet and telephonic prescribing. Finally, Indiana adopted its regulation on prescribing to persons not seen by the physician in October 2003. *See* 844 Ind. Admin. Code 5–4–1.1.

[28] Respondent does not contend that Starks was exempt from registration.

numerous prescriptions long after the expiration of Starks' registration clearly was not appropriate and was unlawful. If, in fact, it is the custom of the pharmacy industry to dispense controlled substances in the face of information that the prescriber's registration has expired, then the entire industry is violating the CSA. *Cf. The T.J. Hooper,* 60 F.2d 737, 740 (2d Cir. 1932) (''[T]here are precautions so imperative that even their universal disregard will not excuse their omission.'').

Respondent also violated the CSA by filling prescriptions that were issued by Mr. Protheroe, a physician assistant, who used Dr. Reppy's DEA registration while Reppy was on leave of absence and not supervising him. As Reppy testified, Protheroe was authorized to issue prescriptions only ''while he worked under [Reppy's] supervision,'' and did not have ''permission to issue prescriptions in [Reppy's] name while [Reppy] was on leave.'' GX 84, at 4. These prescriptions violated the State of Florida's regulations (of which I also take official notice) stating that ''[a] supervising physician may delegate to a prescribing physician assistant only such authorized medicinal drugs as are used in the supervising physician's practice, [and are] not listed'' in the State's formulary. Fla. Admin. Code Ann. R. 64B8–30.008(2).

As Reppy testified, during his leave of absence he was not in any sense supervising Protheroe. Indeed, it appears that all of the controlled-substance prescriptions written by Protheroe were illegal because the State's regulations prohibit a physician assistant from prescribing controlled substances even under a physician's supervision. *Id.* R 64B8–30.008(1).[29]

I further conclude that Respondent had reason to know that Protheroe was writing illegal prescriptions and filled them anyway. *See* GXs 16–18 (daily audit logs). The record amply establishes that Ballinger directed the operations of University during the relevant time period. Moreover, while the sale agreement for Respondent indicated that Carr was then its sole owner, both Reppy and Miller testified that Ballinger and Carr were partners in Respondent and other business ventures involving the distribution of controlled substances over the internet prior to the March 2005 sale of Respondent to Ballinger. GX 87, at 2–4; Tr. 1172–73. Moreover, Respondent's counsel stipulated that Ballinger had a relationship with Respondent during Reppy's employment at University. Tr. 1172. Finally, the evidence also establishes that Ballinger directed that University fax its prescriptions to Respondent. *Id.* at 1179. I therefore hold that Ballinger knew that Protheroe was issuing illegal prescriptions and that this knowledge is properly imputed to Respondent. Respondent thus violated 21 CFR 1306.04 by filling these prescriptions. This finding thus provides additional support for the conclusion that Respondent's registration is ''inconsistent with the public interest.'' [30] 21 U.S.C. 823(f).

Finally, Respondent argues that it made ''numerous attempts to meet with DEA to ensure compliance with DEA's interpretations of applicable laws and regulations'' and that it ''change[d] its business model to assuage DEA's concerns.'' Resp. Prop. Findings at 29–30. Respondent further asserts that ''in January 2007, * * * [it] began requiring physicians who issued prescriptions through [it] to have personally physically examined the patient involved.'' *Id.* at 12 (citing Tr. 877).

The purported support is not, however, testimony, but rather, part of a question asked by Respondent's counsel of a DEA witness, to which the latter answered: ''I don't recall that.'' Tr. 877. Likewise, the further statement by Respondent's lawyer during a colloquy with the ALJ that its reforms ''began in earnest in the beginning of January,'' *id.,* is not evidence. Moreover, given the abundant evidence establishing that Respondent filled numerous illegal prescriptions, and the failure of Mr. Ballinger to testify, Respondent's assertion of its new-found willingness to reform cannot be taken seriously. I therefore reject it.[31]

* * * * *

As the Supreme Court recently explained, ''the prescription requirement * * * ensures [that] patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 126 S.Ct. 904, 925 (2006) (citing *Moore,* 423 U.S. at 135). Even if it is not the usual and customary practice in the traditional brick-and-mortar pharmacy setting to verify the existence of the doctor/patient relationship before filling a prescription, *see* Tr. 1280 (testimony of Dr. Johns), the prescribing and dispensing of controlled substances over the internet poses an extraordinary threat to public health and safety. *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007) (discussing reports of the National Center on Addiction and Substance Abuse and the National Institute of Drug Abuse); *see also William R. Lockridge,* 71 FR 77791 (2006). Indeed, as even Respondent's expert admitted, if a prescription was faxed from a Web site, it would create a suspicion that the drugs would be diverted and require the pharmacist to perform additional investigation before filling the prescription. Tr. 1317. Furthermore, when a pharmacy receives a prescription which indicates that the prescriber and patient are located nowhere near each other, it should be obvious that further inquiry is warranted to determine whether the prescription was issued pursuant to a valid doctor-patient relationship. This is so regardless of whether the pharmacy is a traditional retail pharmacy or a mail order/internet pharmacy.

In sum, because Respondent's dismal record of compliance with federal and state laws and its experience in dispensing controlled substances amply demonstrate that its continued registration is inconsistent with the public interest, there is no need to address the other statutory factors. Moreover, for the same reasons which led me to find that Respondent's registration posed an ''imminent danger to the public health or safety,'' 21 U.S.C. 824(d), I conclude that the public interest requires that its registration be revoked effective immediately. *See* 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BU6696073, be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This Order is effective immediately.

[29] The prescriptions were also illegal for the same reasons that Reppy's prescriptions were illegal.

[30] I also find that Respondent violated Kentucky law by failing to report its dispensing of controlled substances.

[31] Given the abundant evidence of Respondent's failure to comply with applicable laws, I conclude that there is no need to address whether its compounding activities also violated the CSA. Moreover, in light of the evidence, I find it unnecessary to draw an adverse inference based on Mr. Ballinger's failure to testify with respect to the conduct alleged in the Show Cause Order and thus do not address Respondent's exception on this point. I do, however, rely on Mr. Ballinger's failure to testify to draw an adverse inference regarding its assertion that it has reformed its practices.

Dated: August 23, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–17223 Filed 8–30–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0002]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Revision of a currently approved collection. Supplementary Homicide Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 72, Number 122, pages 35071–35072, on June 26, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment October 1, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses. Overview of this information collection:

(1) Type of information collection: Revision of a currently approved collection.

(2) The title of the form/collection: Supplementary Homicide Report.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form 1–704; CJIS Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: City, county, state, federal and tribal law enforcement agencies.

This report will gather data obtained from law enforcement agencies in which a criminal homicide, justifiable homicide, and/or a manslaughter by negligence has occurred.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are approximately 17,523 law enforcement agency respondents; calculated estimates indicate 9 minutes per report.

(6) An estimate of the total public burden (in hours) associated with this collection: There are approximately 31, 541 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D. Street, NW., Washington, DC 20530.

Dated: August 27, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–17275 Filed 8–30–07; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by October 1, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Recurring Study of National Science Foundation-sponsored Graduate Education Impacts or Legacy (GEIL). (Formerly called the Evaluation of the Initial Impacts of the Integrative

Graduate Education Research and Traineeship (IGERT) Program.)

OMB Control No.: 3145–0182.

Expiration Date of Approval: July 31, 2005.

Abstract

The National Science Foundation (NSF) requests extension of data collection (e.g., interviews, surveys, focus groups, site visits) measuring NSF's contribution to the Nation's graduate education enterprise and overall science and engineering workforce. This continuation expands the data collection formerly called ''The Evaluation of the Initial Impacts of the IGERT Program'' most recently approved through July 2005 (OMB 3145–0182).

IGERT began data collection in the late 1990s for use in program research, management and evaluation. Data collection was concurrent with NSF-funding in order to document IGERT's initial impact within individual departments or institutions (often called projects), and on student, faculty and other participants as compared to the educational and training experiences of individuals who were external to IGERT. This request expands data collection to the portfolio of NSF-funded graduate education programs and projects, typically on a program-by-program sub-study basis in order to address long-term impact.

For over fifty years NSF has funded directly and indirectly (e.g. via institutions), tens of thousands of individuals who pursue post-undergraduate education or research training. NSF's graduate education portfolio includes:

- The Integrative Graduate Education Research and Traineeship (IGERT) program. IGERT provides grants to institutions to recruit and support doctoral students in interdisciplinary Science, Technology, Engineering, and Mathematics programs (STEM).
- The graduate Teaching Fellows in K–12 Education (GK–12) program. GK–12 provides grants to institutions to support STEM graduate students' acquisition of skills that will prepare them for careers in the 21st century.
- The Graduate Research Fellowship (GRF) program. GRF provides three years of funding to eligible individuals for graduate study leading to research-based masters or doctoral degrees at an IHE of their choice.

A longer list of NSF's graduate education opportunities and eligibility information is on the NSF Web site under the link: *''Specialized information for Graduate Students''* at: *http://www.nsf.gov/funding/education/jsp?org=NSF@fund_type-2.*

Through longitudinal study NSF aims to learn about the long-term impact or legacy of its program strategies in graduate education. A primary goal is to identify and follow-up with individuals who participated in NSF-funded programs or projects, especially students who graduated with masters or doctoral degrees. The primary means of data collection will be surveys. Site visits, focus groups and interviews are used to improve survey instruments, clarify responses or address questions of institutional impact. Typical respondents are former NSF-funded fellows, trainees or to her participants in NSF-funded projects or are professional scientists, engineers, IHE faculty, K-graduate educators, education administrators and K-IHE policymakers. NSF uses the analysis of responses to prepare and publish reports and to respond to requests from Committees of Visitors, Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART).

The study's broad questions include but are not limited to: What do individuals following post-participation in IGERT or other NSF-funded graduate education opportunities do? Do IGERT or other NSF-funded opportunities provide graduates with the professional and/or research skills needed to work in science and engineering? Are IGERT or other NSF-sponsored graduates satisfied that their NSF-funded graduate education advanced their careers in science or engineering? To what extent do IGERT or other former-NSF-sponsored graduates engage in the science and engineering workforce conduct inter- or multi-disciplinary science? Is there evidence of a legacy from NSF-funding that changed a degree-granting department beyond number of students supported and degrees awarded? To what extent have projects achieved or contributed to individual project goals or the NSF program goals? To what extent have NSF-funded projects or programs broadened participation by diverse individuals, particularly individuals traditionally underemployed in science or engineering, including but not limited to women, minorities, and persons-with-disabilities?

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, Local or Tribal Government.

Number of Respondents: 30,000.

Burden on the Public: 15,000 hours. This estimate covers three graduate education programs, their participants, and comparison group respondents over a three year period.

Dated: August 27, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 07–4287 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 1, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Andrea Polli, 43–01 21st Street, #300, Long Island City, NY 11101.

Permit Application No.: 2008–001.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Areas. The applicant is a participant in the Artists and Writers Program and will work with scientists gathering and modeling environmental data as part of the McMurdo Dry Valleys Long Term Ecological Research Project. One aspect of the project relates to the history of the area. Therefore the applicant wishes to visit the McMurdo Sound area historic huts at Discovery Hut (ASPA #158), Cape Evans (ASPA #155) and Cape Royds (ASPA #157) for video and photographic documentation.

Location: Discovery Hut (ASPA #158), Cape Evans (ASPA #155) and Cape Royds (ASPA #157).

Dates: December 1, 2007 to January 10, 2008.

2. *Applicant:* Robert A. Garrott, Ecology Department, Montana State University, 310 Lewis Hall, Bozeman, MT 59715.

Permit Application No.: 2008–016.

Activity for Which Permit Is Requested: Take, Import into the U.S.A. and Enter Antarctic Specially Protected Area (ASPA). The applicant plans to capture, tag, weigh and collect small skin and muscle samples from up to 280 adult and pup Weddell seals, in order to evaluate how temporal variation in the marine environment affects a long-lived mammal's population dynamics. In addition, the applicant proposes to visit the White Island Antarctic Specially Protected Area (ASPA #137) to census and tag seals in this isolated colony.

Location: McMurdo Sound sea ice and Northwest White Island (ASPA #127).

Dates: October 1, 2007 to February 15, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–17234 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Availability of a Draft Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of availability of a draft Environmental Assessment for proposed activities in the Eastern Pacific Ocean and Caribbean Sea near Central America.

SUMMARY: The National Science Foundation (NSF) gives notice of the availability of a draft Environmental Assessment (EA) for proposed activities in the Eastern Pacific Ocean and Caribbean Sea near Central America.

The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared a draft Environmental Assessment for a marine geophysical survey by the Research Vessel *Marcus G Langseth* in the Eastern Pacific Ocean and Caribbean Sea near Central America, in the Exclusive Economic Zones of Costa Rica and Nicaragua (water depths from <100 meters to >2500 meters) during January–March 2008, The draft Environmental Assessment is available for public review for a 30-day period.

DATES: Comments must be submitted on or before October 1, 2007.

ADDRESSES: Copies of the draft Environmental Assessment are available upon request from: Dr. William Lang, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–7857. The draft is also available on the agency's Web site at: *http://www.nsf.gov/geo/oce/pubs/MGL_Central_America_2008_EA.pdf.*

SUPPLEMENTARY INFORMATION: Lamont-Doherty Earth Observatory (LDEO), with research funding from the NSF, plans to conduct a marine seismic survey in the Eastern Pacific Ocean and Caribbean Sea near Central America during 2008. The research program will take place in the Exclusive Economic Zones of Costa Rica and Nicaragua. The surveys will use a towed airgun array consisting of up to 36 operating airguns with a maximum discharge volume of ~6600 in^3. They will take place in waters from <100 meters to >2500 meters deep.

LDEO plans to conduct this seismic survey as part of the ''Subduction Factory,'' or ''SubFac'' initiative of NSF's MARGINS program. The SubFac initiative will determine the inputs, outputs, and controlling processes of subduction zone systems by obtaining seismic measurements of magma flux, are composition, and lower-plate serpentinization at the Central American Focus Site. Subduction zones, which mark sites of convective downwelling of the Earth's lithosphere, exist at convergent plate boundaries where one plate of oceanic lithosphere converges with another plate and sinks below into the mantle. It is at these subduction zones that the oceanic crust and associated sediments are recycled into the deep mantle. Although this mixing of the Earth's crustal and oceanic materials produces ore deposits and new continental crust in the long term, the immediate result is geological activity often expressed as deep, very intense earthquakes and extensive volcanism.

The seismic survey will investigate the volcanic are, back are, and downgoing plate in the Costa Rican portion of the Central American Focus Site. The study focuses on the central Costa Rican segment of the are, the site of important transitions in lava chemistry, because the narrow isthmus ~150 km or 93 mi wide) is well-suited for detailed seismic imaging using onshore-offshore techniques. A systemic understanding of subduction must include a thorough knowledge of the volcanic are, which in turn is essential in understanding the geochemical recycling processes of the Central American SubFac.

To investigate the Central American SubFac, seismic survey transects are proposed across the isthmus in Costa Rica, along the Costa Rican arc and back-arc, the outer rise of the Cocos Plate, and the Nicaragua Rise. The cross-arc transect will involve use of seismic sources in both the Pacific and Caribbean. To understand arc-building processes, the delineation of lateral heterogeneity in crustal thickness and velocity at scales of tens of kilometers is required, both across and along-arc. In order to achieve this, the study will acquire (1) A double-side, onshore-offshore cross-arc profile, (2) an along-arc refraction line, (3) an array of seismometers in the arc to record all onshore and offshore shots and to allow 3-dimensional (3D) tomography, and (4) a refraction survey across the outer rise of the downgoing Cocos Plate.

The marine program will consist of ~2149 km of unique survey lines—753 km in the Caribbean and 1396 km in the Pacific. With the exception of two lines located in shallow to intermediate-depth water, all lines will be shot twice, once at a ~50-m (20-s) shot spacing for multichannel seismic (MCS) data and once at a ~200-m (80-s) shot spacing for ocean bottom seismometer (OBS) refraction data, for a total of ~3980 km of survey lines. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

LDEO has applied for the issuance of an Incidental Harassment Authorization (IHA) from the National Marine Fisheries Service (NMFS) to authorize the incidental harassment of small numbers of marine mammals during the seismic survey. The information in this Environmental Assessment supports the IHA permit application process, provides information on marine species not covered by the IHA, and addresses

the requirements of Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions''. Alternatives addressed in this EA consist of a corresponding seismic survey at a different time, along with issuance of an associated IHA; and the no action alternative, with no IHA and no seismic survey.

Numerous species of marine mammals occur off Central America. Several of the cetacean species are listed as *endangered* under the U.S. Endangered Species Act (ESA), including humpback, sei, fin, blue, and sperm whales. In addition, the *endangered* West Indian manatee is known to occur in shallow waters along the Caribbean coast of Central America. Sea turtle species known to occur in Central America include the *endangered* leatherback and hawksbill turtles, the *threatened* loggerhead turtle, the green turtle (considered *endangered* in the breeding colony of Florida and the Pacific coast of Mexico and *threatened* elsewhere), and the olive ridley turtle (designated as *endangered* in the breeding colony of the Pacific coast of Mexico and *threatened* elsewhere). The Kemp's ridley turtle may also occur in the Caribbean.

The potential impacts of the seismic surveys would be primarily a result of the operation of airguns, although a multi-beam sonar and a sub-bottom profiler will also be operated. Impacts may include increased marine noise and resultant avoidance behavior by marine mammals, sea turtles, and fish; and other forms of disturbance. The operations of the project vessel during the study would also a minor increase in the amount of vessel traffic. An integral part of the planned survey is a monitoring and mitigation program designed to minimize the impacts of the proposed activities on marine mammals and sea turtles that may be present during the proposed research, and to document the nature and extent of any effects. Injurious impacts to marine mammals and sea turtles have not been proven to occur near airgun arrays; however the planned monitoring and mitigation measures would minimize the possibility of such effects should they otherwise occur.

Protection measures designed to mitigate the potential environmental impacts will include the following: A minimum of one dedicated marine mammal observer maintaining a visual watch during all daytime airgun operations, and two observers for 30 min before start up. A passive acoustic monitoring (PAM) array will be monitored 24 h per day while at the survey area during airgun operations and during most times when the *Langseth* is underway while the airguns are not operating. The use of ramp-up, as well as implementation of power-down or shut-down procedures when animals approach a designated exclusion zone (EZ) are also important mitigation measures. LDEO and its contractors are committed to apply those measures in order to minimize disturbance of marine mammals and sea turtles, and also to minimize the risk of injuries or of other environmental impacts.

With the planned monitoring and mitigation measures, unavoidable impacts to each of the species of marine mammal that might be encountered are expected to be limited to short-term localized changes in behavior and distribution near the seismic vessel. At most, such effects may be interpreted as falling within the Marine Mammal Protection Act (MMPA) definition of ''Level B Harassment'' for those species managed by NMFS. No long-term or significant effects are expected on individual marine mammals, or the populations to which they belong, or their habitats. The agency is currently consulting with the NMFS regarding species within their jurisdiction potentially affected by this proposed activity.

Copies of the draft EA, titled ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* off Central America, January–March 2008,'' are available upon request from: Dr. William Lang, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–7857 or at the agency's Web site at: *http://www.nsf.gov/geo/oce/pubs/MGI_Central_America_2008_EA.pdf*. The NSF invites interested members of the public to provide written comments on this draft EA.

Dated: August 27, 2007.

Dr. Alexander Shor,

Program Director, Oceanographic Instrumentation and Technical Services, Division of Ocean Sciences, National Science Foundation.

[FR Doc. 07–4267 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; 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: Advisory Committee for Environmental Research and Education (9487).

Dates: October 17, 9 a.m.–5 p.m. and October 18, 2007, 9 a.m.–2:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

For Further Information Contact: Alan Tessier, National Science Foundation, 4201 Wilson Blvd., Suite 635, Arlington, Virginia 22230, Phone: 703–292–7198.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

October 17

Introduction of New Members
Update on recent NSF environmental activities
Joint Session with NSF Advisory Committee on Geosciences

October 18

Discussion of Future AC/ERE activities
Meeting with the Director (or Representative)
Establishment of AC/ERE Task Groups

Dated: August 28, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–17342 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; 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: Advisory Committee for Geosciences (1755).

Dates: October 17, 9 a.m.–5 p.m. and October 18, 2007, 9 a.m.–2:30 p.m.

Place: Stafford I, Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

For Further Information Contact: Melissa Lane, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, Virginia 22230, Phone: 703–292–8500.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

October 16
- Directorate activities and plans
- Meeting with the Director (or Representative)
- Division Subcommittee Meetings
- Review of COV Reports

October 17
- Education and Diversity Subcommittee Meeting
- Joint Session with NSF Advisory Committee on Environmental Research and Education

Dated: August 28, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–17344 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–P

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: Plum Island Ecosystems LTER (PIE–LTER) Site Review, Proposal Review Panel for Ocean Sciences (10752).

Date and Time:

Oct. 10, 2007, 4 p.m.–8 p.m.
Oct. 11, 2007, 8 a.m.–7 p.m.
Oct. 12, 2007, 8 a.m.–6 p.m.

Place: Ipswich, Massachusetts.

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 Plum Island Ecosystem Long-Term Ecological Research project award.

Agenda:

Monday, 10 October 2007
- 4–8 p.m. NSF Briefing of the Review Team at Hotel (closed)

Tuesday, 11 October 2007 at The PIE–LTER Site Building
- 8–4 PIE–LTER Project Introduction (open)
- Overview and Evolution/Partnerships
- Research Presentations (talks 20 min + questions 5 min)
- Education and Outreach
- Information Management
- Site Management
- 4–6:45 Reception and Student Posters (open)
- Meet with graduate students and post-docs
- 7 Dinner locally (open); review team separate working dinner (closed)

Wednesday, 12 October 2007
- 8–8:30 Review Team assemble for initial feedback and questions (closed).
- 9–11 Meetings on Administration (closed)
- 1–4:15 Review Team Report Work Session (closed)
- 4:30–5:55 Report-out by Review Team (closed)
- 6 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: August 28, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–17343 Filed 8–30–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Revised Notice of Intent To Prepare a Generic Environmental Impact Statement for Uranium Milling Facilities

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Revised notice of intent (NOI).

SUMMARY: This notice revises a notice published on July 24, 2007 in the **Federal Register** (72 FR 141) which informed the public of the NRC's intent to prepare a Generic Environmental Impact Statement (GEIS) in accordance with the National Environmental Policy Act (NEPA) and NRC's NEPA implementing regulations contained in 10 CFR part 51. The purpose of this revised notice is to (1) Announce that an additional scoping meeting will be held in Gallup, New Mexico on September 27, 2007 and (2) extend the scoping comment period to October 8, 2007. The GEIS will assess the potential environmental impacts associated with uranium recovery at milling facilities employing the in-situ leach (ISL) process. The GEIS may also assess the potential environmental impacts of alternative methods of uranium recovery (including the conventional milling process).

DATES: The NRC has recently held public meetings in Casper, Wyoming and Albuquerque, New Mexico as part of the public scoping process required by NEPA. In response to public requests, the public scoping period for the GEIS has been extended to October 8, 2007. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent possible.

In addition, the NRC will conduct a third public meeting in Gallup, New Mexico to assist in defining the appropriate scope of the GEIS, including the significant environmental issues to be addressed. The meeting date, time and location are listed below:

Meeting Date: September 27, 2007, 7 p.m. to 9:30 p.m.

Meeting Location: Best Western Inn and Suites, 3009 West Hwy 66, Gallup, NM 87301–6813, Phone (505) 722–2221.

For this meeting, members of the NRC staff will be available for informal discussions with members of the public from 6 p.m. to 7 p.m. The formal meeting and associated NRC presentation will begin at 7 p.m. For planning purposes, those who wish to present oral comments at the meeting are encouraged to pre-register by contacting Carol Walls of the NRC by telephone at 1–800–368–5642, Extension 8028, or by e-mail at *CAW@nrc.gov* no later than September 21, 2007. Interested persons may also register to speak at the meetings. Depending on the number of speakers, each speaker may be limited in the amount of time allocated for their comments so that all speakers will have an opportunity to offer comments.

ADDRESSES: Members of the public and interested parties are invited and encouraged to submit comments to the Chief, Rulemaking, Directives, and Editing Branch, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Also, the NRC encourages comments to be submitted electronically to *URLGEIS@nrc.gov.* Please refer to the ''Uranium Recovery GEIS'' when submitting comments.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, or the environmental review process related to this GEIS, please contact: Paul Michalak, Project Manager, Division of Waste Management and Environmental Protection (DWMEP), Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1–800–368–5642, Extension 7612, or by e-mail at *PXM2@nrc.gov,* For general or technical information associated with the safety and licensing of uranium milling facilities, please contact: William Von Till, Branch Chief, Uranium Recovery Branch, DWMEP, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1–800–368–5642, Extension 0598, or by e-mail at *RWV@nrc.gov.*

Information and documents associated with the GEIS are available for public review through the NRC electronic reading room: *http://*

www.nrc.gov/reading-rm/adams.html. Documents may also be obtained from the NRC Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852–2738.

SUPPLEMENTARY INFORMATION:

1.0 Background

The NRC is expecting numerous license applications for in-situ leach (ISL) uranium milling facilities in the coming 2–3 years. This GEIS is intended to address the common issues associated with environmental reviews of such milling facilities located in the western United States. Because there are environmental issues common to ISL milling facilities, the NRC staff will be addressing these common issues generically to aid in a more efficient environmental review for each separate license application, if and when these applications are submitted.

ISL milling facilities recover uranium from low grade ores that may not be economically recoverable by other methods. In this process, a leaching agent, such as oxygen with sodium bicarbonate, is added to native ground water for injection through wells into the subsurface ore body to dissolve the uranium. The leach solution, containing the dissolved uranium, is pumped back to the surface and sent to the processing plant, where ion exchange is used to separate the uranium from the solution. The underground leaching of the uranium also frees other metals and minerals from the host rock. Operators of ISL facilities are required to restore the ground water affected by the leaching operations. The milling process concentrates the recovered uranium into the product known as ''yellowcake'' (U_3O_8). This yellowcake is then shipped to uranium conversion facilities for further processing in the overall uranium fuel cycle.

One alternative to ISL milling is the conventional uranium milling process that extracts uranium from mined ore. At conventional mills, the ore arrives via truck and is crushed, ground, and leached. In most cases, sulfuric acid is the leaching agent, but alkaline leaching can also be done. The leaching agent not only extracts uranium from the ore but also several other constituents (*e.g.*, vanadium, selenium, iron, lead, and arsenic). Conventional mills extract 90 to 95 percent of the uranium from the ore. These mills are typically in areas of low population density, and they typically process ores from mines within 50 kilometers (30 miles). Conventional mills may also produce significant quantities of waste materials, known as mill tailings, from the ore processing. These tailings are contained in impoundments which can be as large as 250 to 300 acres in extent. It is estimated that roughly 95% of the incoming ore ends as mill tailings. These mill tailings contain most of the radioactive progeny of uranium and may be a significant source of radon and radon progeny releases to the environment.

The GEIS will focus on the construction, operation, and decommissioning of ISL mills and also assess alternative methods of uranium recovery. It is noted that the hardrock mining associated with conventional uranium milling is regulated by other entities (e.g., the U.S. Bureau of Land Management, and various state agencies)

For more information on the uranium fuel cycle, please see Regulating Nuclear Fuel, NUREG/BR–0280, Rev. 1, (which can be found online at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0280/).*

2.0 Alternatives To Be Evaluated

No action—The no-action alternative would be to not build nor license potential uranium milling facilities. Under this alternative the NRC would not approve future license applications. This alternative serves as a baseline for comparison of the potential environmental impacts.

Proposed action—The proposed action is the construction, operation, and decommissioning of an ISL uranium mill. Implementation of the proposed action would require the issuance of an NRC license under the provisions of 10 CFR part 40.

Alternatives—The conventional milling process is one alternative. Other alternatives not listed in this notice may be identified through the scoping process.

3.0 Environmental Impact Areas To Be Analyzed

The following resource areas have been tentatively identified for analysis in the GEIS:

—*Public and Occupational Health:* addressing the potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events), and decommissioning;
—*Waste Management:* addressing the types of wastes expected to be generated, handled, stored and subject to re-use or disposal;
—*Land Use:* addressing land use plans, policies and controls;
—*Transportation:* addressing the transportation modes, routes, quantities, and risk estimates;
—*Geology and Soils:* addressing the physical geography, topography, geology and soil characteristics;
—*Water Resources:* addressing the surface and ground water hydrology, water use and quality, and the potential for degradation;
—*Ecology:* addressing wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
—*Air Quality:* addressing meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
—*Noise:* addressing ambient noises, sources, and sensitive receptors;
—*Historical and Cultural Resources:* addressing historical, archaeological, and traditional cultural resources;
—*Visual and Scenic Resources:* addressing landscape characteristics, man-made features and viewshed;
—*Socioeconomics:* addressing the demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
—*Environmental Justice:* addressing the potential disproportionately high and adverse impacts to minority and low-income populations; and
—*Cumulative Effects:* addressing the impacts from past, present, and reasonably foreseeable actions at and near the site.

The examples under each resource area are not intended to be all inclusive, nor is this list an indication that environmental impacts will occur. The list is presented to facilitate comments on the scope of the GEIS. Additions to, or deletions from, this list may occur as a result of the public scoping process.

4.0 Scoping Meetings

This NOI is to encourage public involvement in the GEIS process and to solicit public comments on the proposed scope and content of the GEIS. NRC will hold public scoping meetings as described above to solicit both oral and written comments from interested parties.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the GEIS, and to identify the significant issues related to the proposed action. Scoping is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

—Identify public concerns;

—Ensure that concerns are identified early and are properly studied;

—Identify alternatives that will be examined;

—Identify significant issues that need to be analyzed; and

—Eliminate unimportant issues.

The scoping meetings will begin with NRC staff providing a description of NRC's role and mission followed by a brief overview of NRC's environmental review process and goals of the scoping meeting. The bulk of the meeting will be allotted for attendees to make oral comments.

5.0 Scoping Comments

Written comments should be mailed to the address listed above in the **ADDRESSES** section. Scoping comments may also be submitted electronically via e-mail to *URLGEIS@nrc.gov.* The NRC staff will prepare a scoping summary report in which it will summarize public comments. The NRC will make the scoping summary report and project-related materials available for public review through its electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Further, an NRC Web site will be established in the near future to keep the public abreast of the current schedule and to post important documents.

6.0 The NEPA Process

The GEIS will be prepared according to NEPA and NRC's NEPA implementing regulations contained in 10 CFR part 51.

After the scoping process is complete, the NRC will prepare a draft GEIS. The draft GEIS is scheduled to be published by April 2008. A 45-day comment period on the draft GEIS is planned, and a public meeting(s) to receive comments will be held approximately three weeks after publication of the draft GEIS. Availability of the draft GEIS, the dates of the public comment period, and information about the public meeting will be announced in the **Federal Register**, on NRC's Web page, and in the local news media. The final GEIS is expected to be published in January 2009 and will incorporate, as appropriate, public comments received on the draft GEIS.

Dated at Rockville, Maryland this 22nd day of August, 2007.

For the Nuclear Regulatory Commission.

Gregory Suber,

Branch Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–17276 Filed 8–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

U.S. Digital Instrumentation and Control and Human-Machine Interface Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to provide input concerning digital instrumentation and control and human-machine interface test and research in the United States.

SUMMARY: The increasing use of digital instrumentation and controls, and the growing prevalence of human interactions with such systems, in nuclear generating and fuel cycle facilities have introduced new regulatory challenges along with the potential benefit of improved plant safety. Currently, the U.S. Nuclear Regulatory Commission (NRC) addresses these challenges by analyzing their scope, impact, and potential adverse plant interactions, and then conducting research on each safety-related topical issue identified through this analysis. Often, such analyses and research are performed under contracts that the NRC establishes with commercial entities, national laboratories, universities, and international research facilities. However, there may be advantages to alternative approaches such as establishing a single, integrated test facility with expertise in the areas of digital instrumentation and controls and human-machine interfaces (DIC&HMI).

The NRC is conducting public workshops to review the current and future technical issues in the area of digital instrumentation and control and human-machine interface (I&C and HMI), to identify the capabilities that a facility or facilities would need to have to support their resolution. The workshop will review the capabilities of current facilities and consider lessons learned from their operation. Based on this information a set of options will be developed. Toward that end, the NRC invites stakeholders including those with existing capabilities, as well as others who may be interested in participating (such as national laboratories, universities, other Federal agencies, research and development centers, and vendors), to participate in the workshops. The workshops will seek to develop a consensus in the technical community regarding a set of overarching principles that should be met to ensure the success of any conceptual approaches discussed. Options may include relying on current facilities; upgrading current facilities; or developing a single, integrated facility. In addition, it is necessary to determine the number of organizations within the community that are interested in each option.

Interested parties should note that the staff is working with Pacific Northwest National Laboratory, to develop additional information on experiences that other similar facilities have had, in order to learn from their successes and challenges.

DISCUSSION: The NRC will hold two workshops to engage potentially interested stakeholders. The first workshop will be held on September 6–7, 2007, at the Clarion Hotel at Atlanta International Airport, which is located at 5010 Old National Highway in Atlanta, Georgia. This initial workshop will review, at a conceptual level the current and future technical issues in the area of digital instrumentation and control and human-machine interface (I&C and HMI) and will identify the capabilities that a facility or facilities would need to have to support their resolution. The workshop will review the capabilities of current facilities and consider lessons learned from their operation. Based on this information the workshop will develop a set of options for establishing additional capabilities, if needed, or ways to integrate current capabilities in a manner that creates synergies and efficiencies to support current and future needs of the technical community in the digital I&C and HMI areas.

The second workshop will be held on September 11, 2007, at the Hilton Washington DC/Rockville Executive Meeting Center, which is located at 1750 Rockville Pike in Rockville, Maryland. This workshop will use information gathered at the Atlanta workshop regarding the additional capabilities (if any) that the community requires to address current and future Digital Instrumentation and Control (I&C) and Human Machine Interface (HMI) issues and the facility options available to perform this work. The workshop will discuss at a conceptual level how each of the facility options could be managed. These management issues include potential participants, funding arrangements, conflict of

interest (COI) considerations, and siting. Additional information about both workshops can be obtained at *http://nrc-test-facility.pnl.gov.*

Additionally, to promote the efficiency and effectiveness of these workshops, the NRC invites interested stakeholders to provide comments in the following areas:

(1) Which potential participants might be interested in joint participation, collaboration, and funding of such a facility, and to what extent might this include participants outside the nuclear industry?

(2) If the nuclear industry participates, how could conflict-of-interest issues be addressed?

(3) Do similar facilities currently exist and, if so, what can be learned from their successes and challenges?

(4) What siting options would be most viable (e.g., universities where integration with graduate studies might be encouraged, national laboratories, etc.), considering both cost and ease of technical information exchange?

(5) To what extent could such a facility be designed to be reconfigurable to the expected variety of plant control room and HMI designs?

(6) To what extent could such a facility be designed to also be used as an advanced reactor training simulator for NRC staff?

(7) What impediments, if any, might exist to limit information sharing among participants and external stakeholders?

(8) What could be the benefits, or adverse impacts, of existing and established international collaborative activities in this area?

(9) What could be the NRC's legal, budgetary, and oversight role?

(10) Would stakeholders potentially be interested in the establishment of a facility that would serve as a national technical center of excellence to support a wide range of agencies and industries that have needs and interests in the rapidly advancing areas of instrumentation and controls, digital safety systems, and human-machine interfaces?

The workshop results and public comments received, along with other information developed as a result of the staff's discussions with interested stakeholders, will be used to support NRC decision making on this subject.

AVAILABILITY AND DATES: Additional information is available through the NRC Test Facility Working Group Web page, at *http://nrc-test-facility.pnl.gov.* Comments would be most helpful if received by September 30, 2007.

COMMENT PROCEDURES: The NRC staff encourages and welcomes stakeholder participation in the workshops, as well as submittal of related comments and suggestions from interested parties. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

You may submit comments by any of the following methods:

- Mail comments to Leonard Bond, Ph.D, Pacific Northwest National Laboratory, P.O. Box 999, Mail Stop K5–26, Richland, WA 99352.
- Provide comments on-line at *http://nrc-test-facility.pnl.gov.*
- E-mail comments to *Leonard.Bond@pnl.gov.*

CONTACT INFORMATION: General questions regarding this study or the related workshops should be addressed to Steven A. Arndt at (301) 415–6502 or by e-mail to *SAA@nrc.gov.*

Dated at Rockville, Maryland, this 17 day of August, 2007.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron, Director,

Office of Nuclear Regulatory Research.

[FR Doc. E7–17299 Filed 8–30–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–358]

WTO Dispute Settlement Proceeding Regarding China—Certain Measures Granting Refunds, Reductions or Exemptions From Taxes and Other Payments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on July 12, 2007, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested the establishment of a dispute settlement panel regarding certain Chinese measures granting refunds, reductions or exemptions to enterprises from taxes otherwise due the government. That request may be found at *www.wto.org* contained in a document designated as WT/DS358/13. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before October 5, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0507@ustr.eop.gov,* with ''China Prohibited Subsidies (DS358)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Arun Venkataraman, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC., (202) 395–5694.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that the United States has requested the establishment of a WTO dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established, which is requested to be on August 31, 2007.

Major Issues Raised by the United States

China maintains measures that provide refunds, reductions, or exemptions to enterprises in China from taxes otherwise due the government on the condition that those enterprises purchase domestic over imported goods. The United States believes that, as such, these measures are inconsistent with China's obligations under Article 3.1(b) and 3.2 of the A*greement on Subsidies and Countervailing Measures* (''SCM Agreement''). Furthermore, because they condition advantages on an enterprise's purchase of domestic over imported equipment, these measures appear to accord imported products treatment less favorable than that accorded ''like'' domestic products, inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994* and Article 2.1 and Annex 1, paragraph 1(a), of the *Agreement on Trade-Related Investment Measures* For the same reasons, these measures appear not to comply with China's obligations under paragraphs 7.2–7.3 and 10.3 of Part I of its Protocol of Accession and paragraph 1.2 of Part I of its Protocol of Accession (to the extent that it incorporates paragraph 203 of the Report of the Working Party on the Accession of China).

China also maintains measures that grant refunds, reductions, or exemptions from taxes otherwise due to the government on the condition that the beneficiary enterprises meet certain export performance criteria. The United States believes that, as such, these measures are inconsistent with China's obligations under Article 3.1(a) and 3.2 of the SCM Agreement and, consequently, paragraph 10.3 of Part I of China's Protocol of Accession, and paragraph 1.2 of Part I of its Protocol of Accession (to the extent that it incorporates paragraph 167 of the Report of the Working Party on the Accession of China).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0507@ustr.eop.gov,* with ''China Prohibited Subsidies (DS358)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS–358, China Prohibited Subsidies Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–17357 Filed 8–30–07; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–360]

WTO Dispute Settlement Proceeding Regarding India—Additional and Extra Additional Duties on Imports

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement), the United States has requested the establishment of a dispute settlement panel regarding additional and extra additional duties India applies to imports from the United States. India applies these duties to products that include, but are not limited to, imports of wines and distilled spirits. That request may be found at *www.wto.org* contained in a document designated as WT/DS360/5. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute, comments should be submitted on or before September 14, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0706@ustr.eop.gov,* with ''India Alcohol Duties (DS/360)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Amy A. Karpel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that the United States has requested the establishment of a WTO dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

India imposes an additional duty and an extra additional duty on imports from the United States. India applies these duties to products that include, but are not limited to, imports of wines and distilled spirits. These duties appear to subject imports to ordinary customs duties or other duties or charges in excess of those in India's WTO Tariff Schedule. These duties include the following, as well as any amendments and related or implementing measures:

- Sections 2 and 3, and First Schedule, of the Customs Tariff Act, 1975; (''basic customs duty,'' ''additional duty'' and ''extra additional duty'')
- Section 12 of the Customs Act, 1962 (''basic customs duty'')

• Customs Notification No. 5/2004 (January 8, 2004) (''basic customs duty'' inter alia on spirits);
• Customs Notification No. 20/1997 (March 1, 1997) (''basic customs duty'' inter alia on wine);
• Customs Notification No. 32/2003 (March 1, 2003) (''additional duty'' inter alia on wine and spirits); and
• Customs Notification No. 19/2006 (March 1, 2006) (''extra additional duty'' inter alia on wine and spirits).

As a result of the duties, products from the United States do not appear to be exempt from ordinary customs duties or other charges in excess of those set forth in India's WTO Tariff Schedule and appear to be accorded less favorable treatment than that provided in India's WTO Tariff Schedule. Even if these duties were considered to be internal taxes applied at the time of importation, the duties appear to subject imports from the United States to internal taxes in excess of those applied to like domestic products or directly competitive or substitutable domestic products.

USTR believes these measures are inconsistent with India's obligations under Article II:1(a) and (b), Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0706@ustr.eop.gov,* with ''India Alcohol Duties (DS360)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and BUSINESS CONFIDENTIAL must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged to also provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS–340, China Auto Parts Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–17358 Filed 8–30–07; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will review the results of pay comparisons and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay area boundaries for 2009. The Council anticipates it will complete its work for this year at this meeting and has not scheduled any additional meetings for 2007. The public may submit written materials about the locality pay program to the Council at the address shown below. The meeting is open to the public.

DATES: October 3, 2007, at 10 a.m.

Location: Office of Personnel Management, 1900 E Street, NW., Room 7310, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; Fax (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov.*

For the President's pay agent:

Linda M. Springer,

Director.

[FR Doc. E7–17221 Filed 8–30–07; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Correction to Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In the document appearing on page 47086, FR Doc. E7–16592, Agency Forms Submitted for OMB Review, Request for Comments dated August 22, 2007, the Railroad Retirement Board is making a correction to the Item titled ''Changes Proposed''. As published, the

document contains an error that may be misleading to the public.

CORRECTION OF PUBLICATION: The Item titled ''Changes Proposed'' which reads ''The RRB proposed no changes to Form UI–45'', is corrected to read ''The RRB proposes no changes to Form UI–1e''.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–17273 Filed 8–30–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56322; File No. SR–Amex–2007–59]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Process for the Waiver, Deferral, or Rebate of Initial Listing Fees for Certain Securities That Transfer From Another National Securities Exchange

August 27, 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 August 10, 2007, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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 Exchange proposes to amend Section 140 of the Amex *Company Guide* (the ''*Company Guide*'') to provide a process for the deferral, waiver, or rebate of all or any part of the initial listing fee applicable to index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, and partnership units that transfer to the Amex.

The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 140 of the *Company Guide* currently provides that index fund shares (defined as securities listed under Amex Rule 1000A–AEMI), trust-issued receipts (defined as securities listed under Amex Rule 1200–AEMI), commodity-based trust shares (defined as securities listed under Amex Rule 1200A–AEMI), currency trust shares (defined as securities listed under Amex Rule 1200B–AEMI), paired trust shares (defined as securities listed under Amex Rule 1400), and partnership units (defined as securities listed under Amex Rule 1500–AEMI)[5] initially listed on the Amex are subject to a $5,000 initial listing fee for each series. The Securities are not subject to the initial listing application processing fee. The Exchange is proposing to amend Section 140 of the *Company Guide* to provide that the Board of Governors of the Exchange (the ''Board'') or its designee may, in its discretion, defer, waive, or rebate all or any part of the $5,000 initial listing fee applicable to Securities that transfer from another marketplace to the Amex (*i.e.*, the issue becomes listed on Amex and ceases to be listed on the other exchange).

The Board or its designee currently has the authority to defer, waive, or rebate all or any part of the initial listing fees applicable to stocks, bonds, and warrants[6] and to closed-end funds that transfer to the Amex from another marketplace.[7] The Exchange believes that the extension of such authority to Securities that transfer to the Amex will enable the Exchange to respond to specific competitive situations. This is particularly important given the fee waivers currently offered by other markets to transferring issuers. For example, the New York Stock Exchange (''NYSE'') recently amended its Listed Company Manual to remove initial listing fees payable in connection with transfers of any equity security, structured product, or closed-end management investment company listed on another exchange.[8] Similarly, the Nasdaq Stock Market (''NASDAQ'') has waived initial listing fees with respect to any security being transferred from another exchange.[9]

The proposed authority to defer, waive, or rebate the $5,000 initial listing fee applicable to transferring Securities could be exercised only by the Board or its designee. The Board has delegated this authority to a staff committee which presently has the authority to defer, waive, or rebate initial listing fees for transferring closed-end funds.[10] The committee is comprised of management representatives from the Office of the Chairman and the ETF Marketplace, Finance, and Listing Qualifications Departments.[11] The committee composition is intended to ensure that fee deferral, waiver, and rebate requests receive an appropriate degree of scrutiny and are only granted under circumstances in which a reduction is warranted for competitive reasons. While the Exchange expects that the potential deferral, waiver, or rebate of the initial listing fee applicable to Securities will be attractive to issuers considering listing on the Exchange, it is contemplated that such deferrals, waivers, or rebates would be granted only infrequently to attract an important listing that is likely to generate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, and partnership units are collectively referred to in this filing as the ''Securities.''

[6] *See* Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004) (SR–Amex–2004–70).

[7] *See* Securities Act Release No. 52408 (September 12, 2005), 70 FR 54971 (September 19, 2005) (SR–Amex–2005–024).

[8] *See* Securities Exchange Act Release No. 55314 (February 20, 2007), 72 FR 8823 (February 27, 2007) (SR–NYSE–2007–17).

[9] *See* Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR–NASD–2004–140).

[10] *See supra,* note 7.

[11] An affirmative vote of a majority of the committee members attending a particular meeting (subject to a three-person quorum requirement) would be necessary for deferrals, waivers, or rebates.

significant transaction fee revenue.[12] The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or other regulatory programs. Specifically, issuers of Securities that benefit from any deferral, waiver, or rebate will be reviewed for compliance with Exchange listing standards in the same manner as any other issuer that applies to be listed on the Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it will provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the Exchange has designated the foregoing proposed rule as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that doing so is consistent with the protection of investors and the public interest because the proposal does not raise any novel regulatory issues. The proposed rule is substantially similar to provisions in Nasdaq Rules 4510(a) and 4520(a) and Section 902.02 of the NYSE Listed Company Manual.[18] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–59 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17272 Filed 8–30–07; 8:45 am]

BILLING CODE 8010–01–P

[12] If the committee determines to defer, waive, or rebate listing fees in a comprehensive and/or recurring manner that would constitute a stated policy, practice, or interpretation of an existing rule, the Exchange would file an additional rule change pursuant to Rule 19b–4(f)(1) with respect such policy, practice, or interpretation.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] The Exchange provided written notice to the Commission 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, as is required by Rule 19b–4(f)(6)(iii).

[18] *See supra,* notes 8–9.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56325; File No. SR–Amex–2007–90]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Fee on a Listed Company That Changes Its Corporate Name or Ticker Symbol

August 27, 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 August 16, 2007, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On August 27, 2007, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 142 of the Amex *Company Guide* in order to impose a fee on a listed company that changes its name or ticker symbol. The text of the proposed rule change is available at *http://www.amex.com*, at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Sections 140 and 141 of the Amex *Company Guide*, the Exchange charges issuers initial and annual listing fees, respectively, based on the number of listed shares. Additional listing fees are also imposed if an issuer lists more shares of a listed class of securities. Amex rules also provide for a fee when a company effects a ''substitution listing,'' which consists of reclassifying, changing, or exchanging the listed security into or for another security. The Nasdaq Stock Market (''Nasdaq'') charges similar fees upon the occurrence of the same type of events.[4] In addition to the fees described above, Nasdaq imposes fees on issuers for name and symbol changes, as well as for changes in par value, title, or security designation.[5]

Currently, the Amex does not impose a separate fee for name and symbol changes. In the event of an issuer name or symbol change, the Amex Corporate Actions Group[6] must process the documentation required to modify Exchange records. The process of effecting such changes includes, among other things, contacting the issuer's outside counsel, updating internal Amex files, tracking the name change through the issuer's shareholder approval process, updating daily list records and notifying the Floor. In the event of a symbol change, an Amex employee must also contact the other exchanges to determine whether the symbol is available. If the symbol is not available the employee must contact each exchange again with an alternate symbol. This process can take a few days to complete.

During 2005 and 2006, the Amex processed approximately 90 name and/or symbol changes.[7] In light of the staff resources required to effectuate these changes, the Exchange proposes to impose a $2,000 fee for name and/or symbol changes. The proposed fee would not apply to changes to par value, title, or security designation, as these types of changes occur infrequently, and in virtually all cases constitute a substitution listing which is already subject to a fee of at least $5,000.

The Exchange believes that the proposal is equitable as required by Section 6(b)(4) of the Act.[8] Nasdaq currently charges $2,500 for the same type of change.[9] Accordingly, the Amex believes that the imposition of a $2,000 fee is reasonable given the Exchange resources necessary to implement and disseminate these changes. The Exchange further submits that the proposal is substantially similar to a comparable Nasdaq fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[11] in particular, in that the proposed rule change is designed to provide an equitable allocation of dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities, and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–90. This file number should be included on the subject line if e-mail is used. To help the

[3] Amendment No. 1 made technical corrections to Exhibits 1 and 5 of the original filing.

[4] *See* Nasdaq Rules 4510 and 4520.

[5] *See id.*

[6] The Corporate Actions Group is part of the Listing Qualifications Department.

[7] Three of the 90 changes were changes to the issuer's symbols only.

[8] Section 6(b)(4) of the Act states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[9] *See supra*, note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–90 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17353 Filed 8–30–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56318; File No. SR–Amex–2007–48]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Modifying the Options Listing Criteria for Underlying Securities

August 24, 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 17, 2007, the American Stock Exchange, LLC. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On August 21, 2007, Amex amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01(4) to Amex Rule 915 and add new Commentary .01(6) to Amex Rule 915 for the purpose of permitting the Exchange to list and trade individual equity options that are otherwise ineligible for listing and trading if such option is listed and traded on another national securities exchange.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at Amex's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposal seeks to revise the options original listing guidelines so that, as long as the options maintenance listing standards set forth in Amex Rule 916 are met *and* the option is listed and traded on another national securities exchange, the Amex would be able to list and trade the option. Commentary .01 to Amex Rule 915 sets forth the guidelines that an underlying individual equity security must meet before the Exchange may initially list options on that security. The Amex states that these guidelines or requirements are uniform among the options exchanges.

Commentary .01(4) to Amex Rule 915 relates to the minimum market price that an underlying security must trade at for an option to be listed on it. Paragraph (4) of this Commentary .01 permits the listing of individual equity options on both ''covered'' and ''uncovered'' underlying securities.[4] In the case of an underlying security that is a ''covered security'' as defined under section 18(b)(1)(A) of the 1933 Act, the closing market price of the underlying security must be at least $3 per share for the five (5) previous consecutive business days prior to the date on which the Amex submits an option class certification to The Options Clearing Corporation (''OCC'').[5] In connection with underlying securities deemed to be ''uncovered,'' Exchange rules require that such underlying security be at least $7.50 for the majority of business days during the three (3) calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for ''uncovered'' securities also permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued approval contained in Amex Rule 916; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume (''ADTV'') for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Paragraphs (1) through (3) of Commentary .01 to Rule 915 further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

The existing alternative listing procedure was originally adopted by the Exchange in 2002. At that time, the Commission permitted the Amex to eliminate the $7.50 standard (currently $3 for covered securities) for an underlying security when such option is otherwise listed and traded on another options exchange and has an ADTV over the last three (3) calendar months of at least 5,000 contracts. The Exchange submits that the alternative listing procedure has limited usefulness. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act'') provides that ''[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *.'' *See* 15 U.S.C. 77r(b)(1)(A).

[5] For purposes of this proposal, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. *See* proposed Commentary .01(4) to Amex Rule 915.

listing standards but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition and the maintenance of a national market system. Under the proposal, an option may be multiply-listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets existing continued listing guidelines or requirements.

The Amex notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because, in total, the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

The Amex believes that although the continued listing requirements are uniform among the options exchanges, the application of both the original and continued listing standards in the current market environment have had an anti-competitive effect. Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while the Amex may not list any options on such underlying security. This clearly is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new Commentary .01(6) to Amex Rule 915 and amend the alternative original listing requirement set forth in Commentary .01(4) to Amex Rule 915. Specifically, Commentary .01(6) would be added to provide that notwithstanding that a particular underlying security may not meet the requirements set forth in Paragraphs 1 through 4 of Commentary .01 to Amex Rule 915, the Exchange nonetheless could list and trade an option on such underlying security if: (i) The underlying security meets the guidelines for continued listing in Amex Rule 916; and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. Commentary .01(4)(b) would be amended to delete reference to the alternative original listing guideline for ''uncovered'' securities. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

Amex believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the Amex while at the same time, such option is trading on another options exchange(s). The Amex notes that when an underlying security meets the maintenance listing guidelines and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the Amex notes that the current proposal will not introduce any inappropriate additional listed options classes. The Exchange submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

submissions should refer to File Number SR–Amex–2007–48 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17354 Filed 8–30–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56321; File No. SR–FINRA–2007–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rules 4632C, 6130C and 6130

August 24, 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 August 3, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. FINRA has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which rendered 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

FINRA proposes to amend NASD Rules 4632C and 6130C relating to the NASD/NSX Trade Reporting Facility (the ''NASD/NSX TRF'') to reflect certain changes in the facility's functionality and to conform, to the extent practicable, to the trade reporting rules relating to FINRA's other Trade Reporting Facilities (the ''TRFs'').[5] FINRA also is proposing to amend NASD Rule 6130(a) to clarify that the NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'') and the OTC Reporting Facility will compare and submit to the National Securities Clearing Corporation (''NSCC'') trades reported as other than regular way settlement.

The text of the proposed rule change is available at the FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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 TRFs,[6] including the NASD/NSX TRF, provide members mechanisms for reporting trades in exchange-listed securities executed otherwise than on an exchange. Currently, the functionality offered by the NASD/NSX TRF differs from the functionality offered by some of the other TRFs and, as a result, the rules relating to the NASD/NSX TRF differ from the rules relating to the other TRFs. Specifically, pursuant to NASD Rule 4632C(a)(8), the NASD/NSX TRF does not accept trade reports for Stop Stock Transactions (as such term is defined in Rule 4200C), transactions occurring at prices based on average-weighting or other special pricing formulae or transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time. In addition, pursuant to NASD Rule 6130C(a), the NASD/NSX TRF does not accept trades reported as other than regular way settlement (i.e., Cash, Next Day and Seller's Option). Under the current rules, members must use an alternative electronic mechanism to report these transactions to FINRA.

FINRA is proposing to expand the NASD/NSX TRF's functionality such that members will be able to report the above-described transactions to the NASD/NSX TRF. FINRA is proposing to amend NASD Rules 4632C and 6130C to reflect this change in functionality and conform, to the extent practicable, the NASD/NSX TRF rules to the rules relating to the other TRFs.

FINRA also is proposing to amend NASD Rule 6130(a) to clarify that the ''System'' (defined in Rule 6110 to include the NASD/Nasdaq TRF and the OTC Reporting Facility) will compare and submit to NSCC trades reported as other than regular way settlement. This amendment is consistent with current practice and reflects recent changes in the way that such trades are processed by NSCC.[7] Additionally, this amendment conforms the text of NASD Rule 6130(a) to the text of amended NASD Rule 6130C(a), to the extent practicable.[8]

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the operative date of the proposed rule change on its Web site, which date will be at least 30 days after the date of filing.

2. Statutory Basis

FINRA believes that its proposal is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is in the public interest and

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NSX TRF is now doing business as the FINRA/NSX TRF. The formal name change of each TRF is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

[6] In addition to the NASD/NSX TRF, there are three other TRFs in operation: the NASD/Nasdaq TRF, the NASD/BSE Trade Reporting Facility (the ''NASD/BSE TRF'') and the NASD/NYSE Trade Reporting Facility (the ''NASD/NYSE TRF''). As noted in footnote 5 above, the formal name change of each TRF is pending.

[7] *See* Securities Exchange Release No. 54816 (November 27, 2006), 71 FR 69604 (December 1, 2006) (order approving SR–NSCC–2006–09).

[8] The corresponding rules relating to the other TRFs differ in this regard. NASD Rule 6130D(a) provides that trades reported as other than regular way settlement will not be accepted by the NASD/BSE TRF. NASD Rule 6130E(a) provides that trades reported as other than regular way settlement will be accepted by the NASD/NYSE TRF, but will not be submitted to clearing. The NASD/NYSE TRF will not submit any trades (including regular way settlement trades) to clearing; members must have a Qualified Service Representative (''QSR'') agreement or similar arrangement in place to clear trades submitted to the NASD/NYSE TRF.

[9] 15 U.S.C. 78o–3(b)(6).

appropriate for the maintenance of fair and orderly markets because it will provide members another mechanism to report the types of trades described above with the necessary regulatory information.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–(f)(6) thereunder,[11] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (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. FINRA believes that the proposed rule change is appropriately designated as a ''non-controversial'' rule change because the proposal is substantially similar to the trade reporting requirements for the other TRFs.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission 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. FINRA has satisfied the five-day pre-filing requirement.

[12] *See, e.g.*, NASD Rules 4632 and 6130 (relating to the NASD/Nasdaq TRF), 4632D and 6130D (relating to the NASD/BSE TRF) and 4632E and 613E (relating to the NASD/NYSE TRF).

[13] *See* 15 U.S.C. 78s(b)(3)(C).

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–FINRA–2007–003 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–FINRA–2007–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2007–003 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17271 Filed 8–30–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56324; File No. SR–ISE–2007–72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Options on the iShares Emerging Markets Index Fund for a Six Month Pilot Program

August 27, 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 August 24, 2007, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 ISE. On August 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1''). The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the iShares MSCI Emerging Markets Index Fund for a six month pilot period. ISE is not proposing any changes to the rules of the Exchange.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to obtain approval to list for trading on the Exchange options on the iShares MSCI Emerging Markets Index Fund (''Fund'') for a six month pilot period. The Exchange currently has in place initial listing and maintenance standards set forth in ISE Rules 502(h) and 503(h), respectively (the ''Listing Standards''), that are designed to allow the Exchange to list funds structured as open-end investment companies such as the Fund without having to file for Commission approval to list for trading options on the fund.[5] The Exchange submits that the Fund meets substantially all of the Listing Standard requirements, and for the requirements that are not met, sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund.

The Fund is an open-end investment company designed to hold a portfolio of securities that tracks the MSCI Emerging Markets Index (''Index'').[6] The Fund employs a ''representative sampling'' methodology to track the Index, which means that the Fund invests in a representative sample of securities in the Index that have a similar investment profile as the Index.[7] Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation, and yield) and liquidity measures similar to those of the Index. The Fund generally invests at least 90% of its assets in the securities of the Index or in American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'') representing such securities. In order to improve portfolio liquidity, give the Fund additional flexibility to comply with the requirements of the U.S. Internal Revenue Code and other regulatory requirements, and to manage future corporate actions and index changes in smaller markets, the Fund also has the authority to invest the remainder of its assets in securities that are not included in the Index or in ADRs and GDRs representing such securities. The Fund may invest up to 10% of its assets in other MSCI index funds that seek to track the performance of equity securities of constituent countries of the Index. The Fund is not permitted to concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that the Index concentrates in the stocks of such particular industry or group of industries. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security, or small group of securities, and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund (''Fund Shares'') are issued in exchange for an ''in kind'' deposit of a specified portfolio of securities, together with a cash payment, in minimum aggregation size of 150,000 shares (each, a ''Creation Unit''), as set forth in the Fund's prospectus. The Fund issues and sells Fund Shares in Creation Unit sizes through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and ''in kind,'' with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The Exchange notes that the maintenance listing standards set forth in ISE Rule 503(h) for open-end investment companies do not include criteria based on either the number of shares or other units outstanding, or on their trading volume. The absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of manipulation, since whenever the market price for such shares departs from net asset value, arbitrage will occur. Similarly, since the Fund meets all of the requirements of the Listing Standards except as described below, the Exchange believes that the same analysis applies to the Fund.

The Exchange has reviewed the Fund and determined that it satisfies the Listing Standards except for the requirement set forth in ISE Rule 502(h)(1), which requires the Fund to meet the following condition: ''Any non-U.S. component stocks in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.'' The Exchange currently has in place surveillance agreements with foreign exchanges that cover 45.97% of the securities in the Fund. One of the foreign exchanges on which component securities of the Fund are traded and with which the Exchange does not have a surveillance agreement is the Bolsa Mexicana de Valores (''Bolsa''). The percentage of the weight of the Fund represented by these securities is 6.53%.

The Exchange understands that the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a surveillance agreement. The Exchange further understands that the American

[5] ISE Rules 502(h) and 503(h) set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts, or other similar entities that are traded on a national securities exchange or through the facilities of a national securities exchange.

[6] As provided on the Web site of Morgan Stanley Capital International Inc. (''MSCI'') (*www.msci.com*), which is the entity that created and currently maintains the Index, the Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Index. As of August 17, 2007, the Index was comprised of 839 constituents with the top five constituents representing the following weights: 3.63%, 2.52%, 2.01%, 1.96%, and 1.40%. The Index is rebalanced quarterly, calculated in U.S. Dollars on a real time basis, and disseminated every 60 seconds during market trading hours.

[7] The Fund is comprised of 284 securities as of July 31, 2007. POSCO ADR, a South Korean security, has the greatest individual weight at 4.12%. The aggregate percentage weighting of the top 5, 10, and 20 securities in the Fund are 16.54%, 25.56%, and 40.03%, respectively.

Stock Exchange (''Amex'') has previously attempted to enter into a surveillance agreement with Bolsa as part of seeking approval to list and trade options on the Mexico Index.[8] The Chicago Board Options Exchange (''CBOE'') has also previously attempted to enter into a surveillance agreement with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on Bolsa.[9] Since, in both instances, Bolsa was unable to provide a surveillance agreement, the Commission previously allowed both Amex and CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV, dated as of October 18, 1990 (''MOU''). The Commission noted in the respective Approval Orders that in cases where it would be impossible to secure an agreement, the Commission relied in the past on surveillance sharing agreements between the relevant regulators. The Commission further noted in the respective Approval Orders that pursuant to the terms of the MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from, and provide information to, the other, similar to that which would be required in a surveillance sharing agreement between exchanges; and therefore, should Amex or CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.[10]

The Exchange has also recently contacted Bolsa with a request to enter into a surveillance agreement. Until such time that the Exchange is able to secure a surveillance agreement with Bolsa, the Exchange proposed to rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities for the component securities in the Fund that trade on Bolsa. The Exchange believes this proposal is reasonable in that the Commission has already acknowledged that the MOU permits both the Commission and the CNBV to acquire information from and provide information to the other, similar to that which would be required in a surveillance sharing agreement between exchanges. This proposal would otherwise render the Fund compliant with all of the Listing Standards.[11]

The Exchange proposes to list options on the Fund for a six month pilot program until February 27, 2008 and rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities until the Exchange is able to secure a surveillance agreement with Bolsa. During this period, the Exchange agrees to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (i) Express language addressing market trading activity, clearing activity, and customer identity; (ii) Bolsa's reasonable ability to obtain access to and produce requested information; and (iii) based on the comprehensive surveillance agreement and other information provided by Bolsa, the absence of existing rules, laws, or practices that would impede the Exchange from foreign information relating to market activity, clearing activity, or customer identity, or, in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information. The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act, [14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, this proposed rule change is similar to proposals previously submitted by Amex and CBOE.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[18] However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative

[8] *See* Securities Exchange Act Release No. 34500 (August 8, 1994), 59 FR 41534 (August 12, 1994).

[9] *See* Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995).

[10] The Commission has also previously noted if securing an information sharing agreement is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. In such case, the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[11] The Exchange notes that the component securities of the Fund change periodically. Therefore, the Exchange may in fact have in place surveillance agreements that would otherwise cover the percent weighting requirements set forth in the Listing Standards for securities not trading on Bolsa. In this event, the Fund would satisfy all of the Listing Standards and reliance on an approval order for the Fund would be unnecessary.

[12] The Exchange further represents that it is currently engaged in discussions to enter into information sharing agreements with certain other exchanges, and that upon signing such agreements, ISE will no longer need to rely on the Commission's MOU with the CNBV. *See* Amendment No. 1.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release Nos. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (Approving SR–AMEX–2006–43); 56321 (April 10, 2006), 71 FR 19568 (April 14, 2006) (Approving SR–CBOE–2006–32).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii). In addition, 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 Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[19] *Id.*

delay, to permit the Exchange to list options on the Fund immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal is substantially similar to proposals previously submitted by Amex and CBOE. Also, the Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa during a six month pilot period in which the Exchange will rely on the MOU for purposes of satisfying its surveillance and regulatory responsibilities with respect to the Fund components trading on Bolsa. The Exchange represents that it will regularly update the Commission on the status of its negotiations with Bolsa. The Exchange further represents that it is currently engaged in discussions to enter into information sharing agreements with certain other exchanges, and that upon signing such agreements, ISE will no longer need to rely on the Commission's MOU with the CNBV. The Commission notes that ISE currently has in place surveillance agreements with foreign exchanges that cover 45.97% of the securities in the Fund, and that the Index upon which the Fund is based appears to be a broad based-index. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission for a six month pilot period until February 27, 2008.[20]

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–ISE–2007–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–72 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

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[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56305; File No. SR–NSX–2007–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendment of Its Rules in Light of Amendments to SEC Rule 10a–1 and Regulation SHO

August 22, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2007 and July 6, 2007, National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change and their corresponding amendments, as described in Items I and II below, which Items have been substantially prepared by the Exchange. NSX has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NSX Rules 11.21and 14.2(b)(7) in light of the Commission's short sale regulation, Regulation SHO under the Securities Exchange Act of 1934. Certain provisions of Regulation SHO adopted in the Commission's 2007 release regarding the price test[4] supercede the above NSX Rules related to short sales. As a result, the Exchange is filing this rule change to bring those rules in line with Regulation SHO, as now in effect. The text of the proposed rule change is below. Additions are *italicized* and deletions are bracketed.

RULES OF NATIONAL STOCK EXCHANGE, INC.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007) (''Price Test Adopting Release'').

CHAPTER XI

Trading Rules

* * * * *

Rule 11.21 Short Sales

All short sale orders shall be identified as [either] *a* short sale [or short sale exempt] when entered into the System. [Any marketable order entered in the System that, if matched for execution, would violate the short sale provisions of the Act or the rules and regulations thereunder should be cancelled. The foregoing shall not be in limitation of the Exchange's ability to adopt additional Rules, interpretations or policies relating to short sales.]

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CHAPTER XIV

Intermarket Trading System Plan

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Rule 14.2 Intermarket Trading System Application

(a) No change.

(b) Any commitment to trade which is transmitted to a User to another participating market center shall be firm and irrevocable for the period of time following transmission as was chosen by the sender of the commitment, and shall, at a minimum:

(1)–(6) No change.

(7) *Reserved.* [designate the commitment ''short'' or ''short exempt'' whenever it is a commitment to sell short which, if it should result in an execution in the market of the receiving market center, would result in a short sale to which the provisions of paragraph (a) of Rule 10a–1 under the Act would apply]; and

(8) No change.

(c)–(j) No change.

* * * * *

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 28, 2004, the Commission adopted certain provisions of a new short sale regulation, designated Regulation SHO. On June 28, 2007, the Commission amended Regulation SHO and also repealed Rule 10a–1 under the Act.[5] We have reviewed the NSX Rules to eliminate those rules which we believe are duplicative of, inconsistent with, or otherwise superceded by, Regulation SHO and the repeal of Rule 10a–1 under the Act.[6] Therefore, the Exchange is filing this proposed rule change to amend those NSX rules that are affected by the Commission's amended approach to short sale regulation.

First, in addition to the repeal of Rule 10a–1 under the Act, the Commission added Rule 201(b) to Regulation SHO, prohibiting any SRO from having a short sale price test. The Commission also amended Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt,'' if the seller is relying on an exception from a price test. Accordingly, the Exchange proposes to amend NSX Rule 11.21 to remove the reference to ''short exempt.'' Additionally, the Exchange proposes to remove the second sentence respecting the cancellation of violative orders because there would be no ability to violate a rule that no longer exists. Finally, the Exchange is eliminating the savings clause as duplicative and restating an inherent authority of the Exchange.

Further, the Exchange notes that NSX Rule 14.2(b)(7) regarding the Intermarket Trading System Plan (the ''ITS Plan'') describes marking requirements necessary to comply with Rule 10a–1 under the Act.[7] In light of the repeal of Rule 10a–1, the Exchange proposes to eliminate this provision from its Rules.

As noted below, the Exchange is filing the proposed rule change for immediate effectiveness, with an operative date of July 6, 2007, which is the same date as the effective date of Rule 201 and revised Rule 200(g) of Regulation SHO as well as the elimination of Rule 10a–1 under the Act.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act[9] in general and furthers the objectives of section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NSX believes that the proposed rule change is necessary and appropriate to comply with the amendments to SEC Rule 10a–1 and Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

NSX has asked the Commission to waive the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow the proposed rule change to be effective on July 6, 2007, the compliance date for the amendments to Rule 10a–1 and

[5] Price Test Adopting Release.

[6] Please note that NSX does not have any ETP Holder that is not a member of another self-regulatory organization nor is NSX a designated examining authority or a designated self-regulatory organization for any ETP Holder. Accordingly, it does not subject its members to short interest reporting that is mandated by the other markets.

[7] The Exchange will be filing a separate rule change to eliminate the entire chapter respecting the ITS Plan.

[8] *See* Price Test Adopting Release.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 19b–4(f)(6).

Regulation SHO.[13] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for 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–NSX–2007–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2007–09. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings 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–NSX–2007–09 and should be submitted on or before September 21, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

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[13] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56329; File No. SR–NYSEArca–2007–75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Expand the Trading Hours of Certain Exchange-Traded Funds

August 28, 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 July 30, 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, II, and III below, which Items have been substantially prepared by the Exchange. On August 22, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the trading hours of securities of certain exchange-traded funds (''ETFs'') identified herein to include all three Exchange trading sessions (Opening, Core Trading, and Late Trading Sessions). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

NYSE Arca Equities Rule 7.34 provides for three trading sessions on the NYSE Arca Marketplace each day that NYSE Arca Equities is open for business: (1) An Opening Session (4 a.m. to 9:30 a.m. Eastern Time or ''ET''); (2) a Core Trading Session (9:30 a.m. to 4 p.m. ET); and (3) a Late Trading Session (4 p.m. to 8 p.m. ET). The Core Trading Session for securities described in NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 currently concludes at 4:15 p.m. ET.[3]

NYSE Arca proposes to expand the trading hours of securities of the ETFs identified below to include all three Exchange trading sessions. The Commission previously approved proposals to list and trade and to trade pursuant to unlisted trading privileges (''UTP'') the securities of such ETFs. The following ETFs are listed in reverse chronological order based on the dates of the Commission's approval orders, in one, but not all three, of the Exchange's trading sessions:

- the PowerShares DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund;[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 relate to Investment Company Units, Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Partnership Units, and Paired Trust Shares, respectively. *See* Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77) (establishing hours of trading for securities of certain ETFs).

[4] These ETFs were approved for trading on the Exchange pursuant to UTP under Commentary .02

Continued

• the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund; [5]

• 81 ETFs of the ProShares Trust, including certain Ultra Funds, Short Funds, and Ultra Short Funds: (1) Ultra Russell 2000 ProShares (f/k/a Ultra Russell 2000); (2) Ultra S&P SmallCap 600 ProShares (f/k/a Ultra S&P SmallCap 600); (3) Ultra S&P500/Citigroup Value; (4) Ultra S&P500/Citigroup Growth; (5) Ultra S&P MidCap 400/Citigroup Value; (6) Ultra S&P MidCap 400/Citigroup Growth; (7) Ultra S&P SmallCap 600/Citigroup Value; (8) Ultra S&P SmallCap 600/Citigroup Growth; (9) Ultra Basic Materials ProShares (f/k/a Ultra Basic Materials); (10) Ultra Consumer Goods ProShares (f/k/a Ultra Consumer Goods); (11) Ultra Consumer Services ProShares (f/k/a Ultra Consumer Services); (12) Ultra Financials ProShares (f/k/a Ultra Financials); (13) Ultra Health Care ProShares (f/k/a Ultra Health Care); (14) Ultra Industrials ProShares (f/k/a Ultra Industrials); (15) Ultra Oil & Gas ProShares (f/k/a Ultra Oil & Gas); (16) Ultra Real Estate ProShares (f/k/a Ultra Real Estate); (17) Ultra Semiconductors ProShares (f/k/a Ultra Semiconductors); (18) Ultra Technology ProShares (f/k/a Ultra Technology); (19) Ultra Utilities ProShares (f/k/a Ultra Utilities); (20) Ultra Russell Midcap Index; (21) Ultra Russell Midcap Growth ProShares (f/k/a Ultra Russell Midcap Growth Index); (22) Ultra Russell Midcap Value ProShares (f/k/a Ultra Russell Midcap Value Index); (23) Ultra Russell 1000 Index; (24) Ultra Russell 1000 Growth ProShares (f/k/a Ultra Russell 1000 Growth Index); (25) Ultra Russell 1000 Value ProShares (f/k/a Ultra Russell 1000 Value Index); (26) Ultra Russell 2000 Growth ProShares (f/k/a Ultra Russell 2000 Growth Index); (27) Ultra Russell 2000 Value ProShares (f/k/a Ultra Russell 2000 Value Index); (28) Short Russell 2000 ProShares (f/k/a Short Russell 2000); (29) Short S&P SmallCap 600 ProShares (f/k/a Short S&P SmallCap 600); (30) Short S&P500/Citigroup Value; (31) Short S&P500/Citigroup Growth; (32) Short S&P MidCap 400/Citigroup Value; (33) Short S&P MidCap 400/Citigroup Growth; (34) Short S&P SmallCap 600/Citigroup Value; (35) Short S&P SmallCap 600/Citigroup Growth; (36) Short Basic Materials; (37) Short Consumer Goods; (38) Short Consumer Services; (39) Short Financials; (40) Short Health Care; (41) Short Industrials; (42) Short Oil & Gas; (43) Short Real Estate; (44) Short Semiconductors; (45) Short Technology; (46) Short Utilities; (47) Short Russell Midcap Index; (48) Short Russell Midcap Growth Index; (49) Short Russell Midcap Value Index; (50) Short Russell 1000 Index; (51) Short Russell 1000 Growth Index; (52) Short Russell 1000 Value Index; (53) Short Russell 2000 Growth Index; (54) Short Russell 2000 Value Index; (55) UltraShort Russell 2000 ProShares (f/k/a UltraShort Russell 2000); (56) UltraShort S&P SmallCap 600; (57) UltraShort S&P500/Citigroup Value; (58) UltraShort S&P500/Citigroup Growth; (59) UltraShort S&P MidCap 400/Citigroup Value; (60) UltraShort S&P MidCap 400/Citigroup Growth; (61) UltraShort S&P SmallCap 600/Citigroup Value; (62) UltraShort S&P SmallCap 600/Citigroup Growth; (63) UltraShort Basic Materials ProShares (f/k/a UltraShort Basic Materials); (64) UltraShort Consumer Goods ProShares (f/k/a UltraShort Consumer Goods); (65) UltraShort Consumer Services ProShares (f/k/a UltraShort Consumer Services); (66) UltraShort Financials ProShares (f/k/a UltraShort Financials); (67) UltraShort Health Care ProShares (f/k/a UltraShort Health Care); (68) UltraShort Industrials ProShares (f/k/a UltraShort Industrials); (69) UltraShort Oil & Gas ProShares (f/k/a UltraShort Oil & Gas); (70) UltraShort Real Estate ProShares (f/k/a UltraShort Real Estate); (71) UltraShort Semiconductors ProShares (f/k/a UltraShort Semiconductors); (72) UltraShort Technology ProShares (f/k/a UltraShort Technology); (73) UltraShort Utilities ProShares (f/k/a UltraShort Utilities); (74) UltraShort Russell Midcap Index; (75) UltraShort Russell Midcap Growth ProShares (f/k/a UltraShort Russell Midcap Growth Index); (76) UltraShort Russell Midcap Value ProShares (f/k/a UltraShort Russell Midcap Value Index); (77) UltraShort Russell 1000 Index; (78) UltraShort Russell 1000 Growth ProShares (f/k/a UltraShort Russell 1000 Growth Index); (79) UltraShort Russell 1000 Value ProShares (f/k/a UltraShort Russell 1000 Value Index); (80) UltraShort Russell 2000 Growth ProShares (f/k/a UltraShort Russell 2000 Growth Index); and (81) UltraShort Russell 2000 Value ProShares (f/k/a UltraShort Russell 2000 Value Index); [6]

• the SPD® [7] DJ Global Titans ETF (f/k/a the streetTRACKS Dow Jones Global Titans Index Fund);[8]

• the iShares® [9] MSCI Emerging Markets Index Fund; [10]

• the iShares S&P Global Energy Sector Index Fund, iShares S&P Global Financials Sector Index Fund, iShares S&P Global Health Care Sector Index Fund, iShares S&P Global Telecommunications Sector Index Fund, iShares S&P Global Information Technology Sector Index Fund, iShares S&P Latin America 40 Index Fund, and iShares MSCI EAFE Index Fund; [11]

• the Claymore MACROshares Oil Up Tradeable Shares and the Claymore MACROshares Oil Down Tradeable Shares; [12]

• the DJ STOXX 50 ETF (f/k/a the streetTRACKS Dow Jones STOXX 50 Fund) and the DJ Euro STOXX 50 ETF (f/k/a the streetTRACKS Dow Jones EURO STOXX 50 Fund); [13]

• the iShares S&P Global 100 Index Fund; [14]

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to Rule 8.200 during the Core Trading Session. *See* Securities Exchange Act Release No. 55484 (March 16, 2007), 72 FR 13847 (March 23, 2007) (SR–NYSEArca–2006–67).

[5] These ETFs were approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session (except for the PowerShares DB Base Metals Fund, which was approved for trading during the Late Session as well). *See* Securities Exchange Act Release No. 55453 (March 13, 2007) 72 FR 13333 (March 21, 2007) (SR–NYSEArca–2006–62).

[6] These ETFs of the ProShares Trust were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87). Some of the ETFs of the ProShares Trust listed above are not currently trading because they have not yet been launched.

[7] SPDR® is a registered trademark of The McGraw-Hill Companies, Inc.

[8] This ETF was approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55085 (January 11, 2007), 72 FR 2717 (January 22, 2007) (SR–NYSEArca–2006–37).

[9] iShares® is a registered trademark of Barclays Global Investors, N.A.

[10] This ETF was approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55083 (January 10, 2007), 72 FR 2322 (January 18, 2007) (SR–NYSEArca–2006–39).

[11] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55053 (January 5, 2007), 72 FR 1794 (January 16, 2007) (SR–NYSEArca–2006–38).

[12] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 8.400 during the Core Trading Session. *See* Securities Exchange Act Release No. 55033 (December 29, 2006) 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75).

[13] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55032 (December 29, 2006), 72 FR 1042 (January 9, 2007) (SR–NYSEArca–2006–36).

[14] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55019 (December 28, 2006), 72 FR 1047 (January 9, 2007) (SR–NYSEArca–2006–35).

• the iShares MSCI Belgium Index Fund, iShares MSCI France Index Fund, iShares MSCI Italy Index Fund, iShares MSCI Netherlands Index Fund, iShares MSCI Spain Index Fund, iShares MSCI Sweden Index Fund, iShares MSCI Switzerland Index Fund, and iShares MSCI United Kingdom Index Fund; [15]

• the iShares S&P Europe 350 Index Fund; [16]

• the iShares MSCI Brazil Index Fund and iShares MSCI South Africa Index Fund; [17]

• the iShares S&P Global Consumer Discretionary Sector Index Fund, iShares S&P Global Consumer Staples Sector Index Fund, iShares S&P Global Industrials Sector Index Fund, iShares S&P Global Utilities Sector Index Fund, and iShares S&P Global Materials Sector Index Fund; [18]

• the PowerShares DB G10 Currency Harvest Fund; [19]

• the UltraShort S&P 500 ProShares (f/k/a Ultra Short 500 Fund, UltraShort QQQ ProShares (f/k/a Ultra Short 100 Fund), UltraShort Dow 30 ProShares (f/k/a Ultra Short 30 Fund), and UltraShort Mid-Cap 400 ProShares (f/k/a Ultra Short Mid-Cap 400 Fund); [20]

• the Ultra S&P 500 ProShares (f/k/a Ultra 500 Fund), Ultra QQQ ProShares (f/k/a Ultra 100 Fund), Ultra Dow 30 ProShares (f/k/a Ultra 30 Fund), Ultra Mid-Cap 400 ProShares (f/k/a Ultra Mid-Cap 400 Fund), Short S&P 500 ProShares (f/k/a Short 500 Fund), Short QQQ ProShares (f/k/a Short 100 Fund), Short Dow 30 ProShares (f/k/a Short 30 Fund), and Short Mid-Cap 400 ProShares (f/k/a Short Mid-Cap 400 Fund); [21]

• the following ETFs of the WisdomTree Trust: (1) WisdomTree Europe Total Dividend Fund; (2) WisdomTree Europe High-Yielding Equity Fund; (3) WisdomTree Japan Total Dividend Fund; (4) WisdomTree Japan High-Yielding Equity Fund; (5) WisdomTree DIEFA Fund; (6) WisdomTree DIEFA High Yielding Equity Fund; (7) WisdomTree Pacific ex-Japan Total Dividend Fund; (8) WisdomTree Pacific ex-Japan High-Yielding Equity Fund; (9) WisdomTree International LargeCap Dividend Fund; (10) WisdomTree International MidCap Dividend Fund; (11) WisdomTree International SmallCap Dividend Fund; (12) WisdomTree International Dividend Top 100 Fund; (13) WisdomTree Europe Dividend Top 100 Fund; (14) WisdomTree Europe SmallCap Dividend Fund; (15) WisdomTree Japan SmallCap Dividend Fund; (16) WisdomTree International Consumer Non-Cyclical Sector Fund; (17) WisdomTree International Basic Materials Sector Fund; (18) WisdomTree International Communications Sector Fund; (19) WisdomTree International Consumer Cyclical Sector Fund; (20) WisdomTree International Energy Sector Fund; (21) WisdomTree International Financial Sector Fund; (22) WisdomTree International Healthcare Sector Fund; (23) WisdomTree International Industrial Sector Fund; (24) WisdomTree International Technology Sector Fund; (25) WisdomTree International Utilities Sector Fund; (26) WisdomTree Emerging Markets Total Dividend Fund; (27) WisdomTree Emerging Markets High-Yielding Equity Fund; (28) WisdomTree Emerging Markets Dividend Top 100 Fund; (29) WisdomTree Latin America Dividend Fund; (30) WisdomTree Asia Emerging Markets Total Dividend Fund; (31) WisdomTree Asia Emerging Markets High-Yielding Equity Fund; (32) WisdomTree China Dividend Fund; (33) WisdomTree Hong Kong Dividend Fund; and (34) WisdomTree Singapore Dividend Fund; [22]

• the iShares GSCI Commodity-Indexed Trust; [23]

• the United States Oil Fund, LP; [24]

• the PowerShares DB Commodity Index Tracking Fund (f/k/a the DB Commodity Index Tracking Fund); [25]

• the iShares Silver Trust; [26]

• iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund, iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund; [27]

• the Vanguard European ETF (f/k/a the Vanguard MSCI Europe Index Fund), the Vanguard Pacific ETF (f/k/a the Vanguard MSCI Pacific Index Fund), and the Vanguard Emerging Markets ETF (f/k/a the Vanguard MSCI Emerging Markets Select Index Fund); [28] and

• the iShares COMEX Gold Trust. [29]

In support of this proposed rule change, the Exchange states that the representations in the approval orders

[15] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55017 (December 28, 2006), 72 FR 1044 (January 9, 2007) (SR–NYSEArca–2006–34).

[16] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55004 (December 22, 2006), 72 FR 173 (January 3, 2007) (SR–NYSEArca–2006–33).

[17] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 55002 (December 21, 2006), 71 FR 78503 (December 29, 2006) (SR–NYSEArca–2006–32).

[18] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 54473 (September 20, 2006), 71 FR 56204 (September 26, 2006) (SR–NYSEArca–2006–60).

[19] This ETF was approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session. *See* Securities Exchange Act Release No. 54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR–NYSEArca–2006–64).

[20] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[21] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

[22] These ETFs were approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 53999 (June 15, 2006), 71 FR 35981 (June 22, 2006) (SR–NYSEArca–2006–30). Some of the ETFs of the WisdomTree Trust are not currently trading because they have not yet been launched.

[23] This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.203 during the Core Trading Session. *See* Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR–NYSEArca–2006–12).

[24] This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.300 during the Core Trading Session. *See* Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR–NYSEArca–2006–11).

[25] This ETF was approved for trading on the Exchange pursuant to UTP under Commentary .02 to Rule 8.200 during the Core Trading Session. *See* Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR–PCX–2006–22).

[26] This ETF was approved for trading on the Exchange pursuant to UTP under Rule 8.201 during the Core Trading Session. *See* Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117).

[27] These ETFs were approved for listing and trading on the Exchange under Rule 5.2(j)(3) during the Core and Late Trading Sessions. *See* Securities Exchange Act Release No. 53230 (February 6, 2006), 71 FR 7594 (February 13, 2006) (SR–PCX–2005–116).

[28] These ETFs were originally approved for trading on the Exchange pursuant to UTP under Rule 5.2(j)(3) during the Core Trading Session. *See* Securities Exchange Act Release No. 52221 (August 8, 2005), 70 FR 48222 (August 16, 2005) (SR–PCX–2005–74). The Exchange expanded the hours during which these ETFs were eligible to trade to include the Late Trading Session in December 2005. *See* Securities Exchange Act Release No. 52927 (December 8, 2005), 70 FR 74397 (December 15, 2005) (SR–PCX–2005–128).

[29] This ETF was approved for UTP trading on the Exchange under Rule 8.201 during the Core Trading Session. *See* Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR–PCX–2004–132). This ETF was subsequently approved for listing and trading in all three Exchange trading sessions upon transfer of the listing to the Exchange. *See* Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43). Pursuant to this proposal, the Exchange seeks to trade the securities of this ETF in all three trading sessions prior to the transfer of the listing.

for the foregoing ETFs, as summarized below, continue to apply with respect to trading during the Core and Late Trading Sessions:

1. The Exchange has appropriate rules to facilitate transactions in shares of the above ETFs during all trading sessions. The Exchange deems such shares to be equity securities, thus rendering trading in such shares subject to the Exchange's existing rules governing the trading of equity securities.

2. The Exchange's surveillance procedures are adequate to properly monitor trading of shares of the above ETFs in all trading sessions.[30]

3. The Exchange has distributed an Information Bulletin to Equity Trading Permit (''ETP'') Holders prior to the commencement of trading of the shares of the above ETFs on the Exchange that explains the terms, characteristics, and risks of trading such shares. In addition, the Exchange states that it will distribute an Information Bulletin that explains the terms, characteristics, and risks of trading the shares of the above ETFs that have not yet been launched to ETP Holders prior to the commencement of trading of such shares.

4. The Exchange will require ETP Holders with a customer who purchases newly issued shares of the above ETFs in any trading session on the NYSE Arca Marketplace to provide that customer with a product description, if available, or a prospectus, and has noted this delivery requirement in the Information Bulletin.

5. When the Exchange is the UTP trading market, the Exchange will cease trading in the shares of ETFs during all trading sessions if (a) the listing market stops trading the shares, or (b) the listing market delists the shares. Additionally, the Exchange may cease trading the shares if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. UTP trading in the shares of ETFs is also governed by the trading halt provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (''IIV'')[31] or the value of the underlying index or other applicable underlying benchmark. ETF shares will be traded following a trading halt in accordance with NYSE Arca Equities Rule 7.35(f).

6. When the Exchange is the listing market, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of an ETF. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. Factors for consideration may include (a) the extent to which trading is not occurring in the securities or other instruments underlying an ETF, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the shares of listed ETFs are subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule (NYSE Arca Equities Rule 7.12) or by the halt or suspension of trading of the underlying securities or other instruments underlying an ETF. If the IIV or the index value applicable to a series of shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

7. The IIV and/or index value (or value of the underlying asset or instrument, if not an index) will continue to be disseminated during all three trading sessions, to the extent the relevant approval order provides for this dissemination requirement.

The Exchange intends to distribute to its ETP Holders and make available on its Web site a Regulatory Information Bulletin titled ''*Exchange-Traded Funds—Extended Trading Hours*'' that discloses and discusses, among other things, the following: (1) The underlying index value may not be updated during the Core and Late Trading Sessions; (2) the IIV may not be updated during the Core and Late Trading Sessions; (3) commodity and currency spot prices are available in the Core and Late Trading Sessions, but commodity and currency futures prices generally will not be available in the Core and Late Trading Sessions;[32] (4) lower liquidity in the Core and Late Trading Sessions may impact pricing; (5) higher volatility in the Core and Late Trading Sessions may impact pricing; (6) wider spreads may occur in the Core and Late Trading Sessions; (7) required customer disclosures;[33] (8) the circumstances that trigger trading halts; and (9) suitability requirements. The Exchange recently amended NYSE Arca Equities Rule 7.34(e) to require ETP Holders to disclose additional risks associated with extended hours trading in new derivative securities products to customers.[34]

The Exchange notes that if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout Exchange trading hours. Similarly, if the IIV does not change during any portion of Exchange trading hours, then the last official calculated IIV must remain available throughout Exchange trading hours.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Section 6(b)(5),[36] 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

[30] The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG. In addition, as referenced in the applicable approval orders, the Exchange has in place information sharing agreements with the relevant exchange(s).

[31] The IIV is also sometimes referred to as the Indicative Optimized Portfolio Value (''IOPV''), the Indicative Fund Value (''IFV''), the Indicative Trust Value (''ITV''), and the Indicative Partnership Value (''IPV''), depending upon the type of ETF being traded and the terminology used in the Commission approval orders.

[32] The Exchange states that, in certain cases, the futures or options markets for a particular commodity may be closed during part of the Core Trading Session, and the IIV would be static for that particular future or options price, but widely disseminated. In addition, the prices of certain futures contracts in commodities (*e.g.*, gold) and currencies are available on a 24-hour basis.

[33] *See infra* note 34.

[34] *See* Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR–NYSEArca–2007–74). Specifically, the Exchange requires ETP Holders to disclose to their non-ETP Holder customers that an updated underlying index value or IIV may not be calculated or publicly disseminated during extended trading hours. Since the IIV is not calculated or widely disseminated during the Opening and Late Trading Sessions, an investor who is unable to calculate an implied value for a derivative securities product in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring ETP Holders to disclose this risk to non-ETP Holders will facilitate informed participation in extended hours trading.

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NYSE Arca consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–75 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–2007–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–2007–75 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17376 Filed 8–30–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56323; File No. SR–NYSEArca–2007–86]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Fill-or-Kill Order Type

August 27, 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 August 10, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation'') 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 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 NYSE Arca Equities, is proposing to amend its rules in order to add a new order type known as the Fill-or-Kill Order. The changes described in this rule proposal would add new NYSE Arca Equities Rule 7.31(ll). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The 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

In order to provide additional flexibility and increased functionality to its system and its Users,[5] the Exchange proposes to add a new order type known as the Fill-or-Kill order.

Fill-or-Kill orders are limit orders that will be executed in full as soon as such order is received. However, if execution is not possible, the entire order will be immediately cancelled. Of course, Fill-or-Kill orders will not route out of NYSE Arca to other market centers; they will either be immediately executed, or cancelled, in their entirety.

The Exchange believes that the addition of the proposed order type will

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of ''User.''

enhance flexibility and order execution opportunities for its Users.[6]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5)[8] 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 mechanisms 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE Arca has asked the Commission to waive the 30-day operative delay. The Commission believes such a waiver is consistent with the protection of investors and the public interest because it would permit the Exchange to offer the Fill-or-Kill order type functionality without delay.[11] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

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–NYSEArca–2007–86 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-2007–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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–2007–86 and should be submitted on or before September 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17274 Filed 8–30–07; 8:45 am]

BILLING CODE 8010–01–P

[6] This proposed order type is substantially similar to Rule 131(h) of the American Stock Exchange LLC.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 12 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Economic, Energy, and Business Affairs

[Public Notice 5920]

List of August 13, 2007, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act of 2003 (Public Law 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Public Law 108–19) and section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of June 21, 2007 (Volume 72, Number 119, page 3426) to include Turkey.

FOR FURTHER INFORMATION CONTACT: Sue Saarnio, Special Advisor for Conflict Diamonds, Bureau of Economic, Energy, and Business Affairs, Department of State (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the

President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR Part 592 (''Rough Diamonds Control Regulations'') (69 FR 56936, September 23, 2004).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003, delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate of Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 294 (July 6, 2006), I hereby identify the following entities as of August 13, 2007, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of June 21, 2007 (Volume 72, Number 119 34326–34327).

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Bangladesh—Ministry of Commerce.
Belarus—Department of Fiance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines.
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
India—The Gem and Jewellery Export Promotion Council.
Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Liberia—Ministry of Lands, Mines and Energy.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
New Zealand—Ministry of Foreign Affairs and Trade.
Norway—The Norwegian Goldsmiths' Association.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Turkey—Istanbul Gold Exchange.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. 07–4260 Filed 8–30–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5921]

Defense Trade Advisory Group; Notice of Membership

AGENCY: Department of State.

ACTION: Notice.

The U.S. Department of State's Bureau of Political-Military Affairs' Defense Trade Advisory Group (DTAG) is accepting membership applications.

The DTAG was established as a continuing committee under the authority of 22 U.S.C. 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. I *et seq.* (''FACA'').

The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for munitions exports. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the U.S. continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) policy issues on commercial defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, services, and technical data; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions relating to actions designed to carry out the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs on the basis of individual substantive and technical expertise and qualifications, and are drawn from a representative cross-section of U.S. defense industry, association, academic, and foundation personnel, including appropriate technical and military experts. All DTAG members shall be aware of the

Department of State's mandate that arms transfers must further U.S. national security and foreign policy interests. DTAG members also shall be versed in the complexity of commercial defense trade and industrial competitiveness, and all members must be able to advise the Bureau on these matters. Further, DTAG members will not be advocates for or consider themselves as representatives on behalf of their employers or organizations when serving as a member of the DTAG. While members are expected to use their expertise and provide candid advice, national security and foreign policy interests of the U.S. shall be the basis for all policy and technical recommendations:

DTAG members' responsibilities include:

• Service for a consecutive two-year term which may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs (Membership shall automatically terminate for members who fail to attend two consecutive DTAG plenary meetings).

• Making recommendations in accordance with the DTAG Charter and the FACA.

• Making policy and technical recommendations within the scope of the U.S. commercial export control regime as mandated in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed for travel, per diem, and other expenses incurred in connection with their duties as DTAG members.

How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) e-mail address; (7) résumé; and (8) summary of qualifications for DTAG membership.

This information may be provided via two methods:

• *E-mailed to the following address: Sweeneymf@state.gov.* In the subject field, please write, ''DTAG Application.''

• *Send in hardcopy to the following address:* Mary F. Sweeney, PM/DTCM, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

All applications must be postmarked by September 24, 2007.

Dated: August 27, 2007.

Frank J. Ruggiero,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E7–17330 Filed 8–30–07; 8:45 am]

BILLING CODE 4710–25–P

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 June 15, 2007, vol. 72, no. 115, page 33276. 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.

DATES: Please submit comments by October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification Procedures for Products and Parts.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0018.

Forms(s): 8110–12, 8130–1, 8130–3, 8130–6, 8130–9, 8130–12.

Affected Public: An estimated 13,339 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 17 minutes per response.

Estimated Annual Burden Hours: An estimated 30,487 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: 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 August 28, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–4289 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–34]

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 September 10, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–28739 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.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–28739.

Petitioner: Papillon Airways, Inc.

Section of 14 CFR Affected: 14 CFR 136.9(a) and 136.9(b)(2).

Description of Relief Sought: To allow Papillon Airways, Inc., to operate its helicopters over the Colorado River and its tributaries within the Grand Canyon National Park. Papillon also requests that, while a life preserver would be available for each passenger, passengers would not be required to wear life preservers while in flight.

[FR Doc. E7–17370 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–32]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to 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 September 20, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25156 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.

Privacy: 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).

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.

FOR FURTHER INFORMATION CONTACT: Jan Thor (425–227–2127), Transport Standards Staff, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, 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.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2006–25156.

Petitioner: Hawker Beechcraft Corporation.

Section of 14 CFR Affected: § 25.981(a)(3).

Description of Relief Sought: Hawker Beechcraft is petitioning for a full exemption from the fuel tank safety provisions of § 25.981(a)(3), as amended by Amendment 25–102, regarding the structural lightning protection of wing fasteners. The requirements include consideration of factors such as aging, wear, and maintenance errors as well as the existence of latent failures in developing designs that prevent ignition sources in fuel tanks. Hawker Beechcraft is concerned that the additional safety benefit gained by re-designing to comply completely with the provisions of § 25.981(a)(3) for wing fasteners would not be commensurate with the additional costs.

[FR Doc. E7–17371 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–29080]

Agency Information Collection Activities: Notice of Request for Extension and Change of Title of a Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal and change of title of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. As part of FHWA's ongoing effort to reduce the overall burden on the public, four currently approved information collections associated with the accommodation or relocation of utility facilities in the right-of-way of highway facilities are being combined into a single collection (2125–0519) with a new title of Utility Adjustments, Agreements, Eligibility Statements, and Accommodation Policies.

Since each collection involves information regarding Federal regulations on utilities, this request will allow FHWA to streamline the collection process for the respondents with the ultimate goal of lowering the overall information collection burden. In addition to the proposed burden-hour reductions, by combining these collections, FHWA will be in a position to communicate collection activity from the respondents in one process, thus allowing for greater efficiency for both FHWA and the public. These four current information collections include:

2125–0514: Develop and Submit Utility Accommodation Policies (expiration date: November 30, 2007);

2125–0515: Eligibility Statement for Utility Adjustments (expiration date: November 30, 2007);

2125–0519: Developing and Recording Costs for Utility Adjustments (expiration date: December 31, 2007); and

2125–0522: Utility Use and Occupancy Agreements (expiration date: December 31, 2007).

DATES: Please submit comments by October 30, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–29080 by any of the following methods:

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Obenberger, 202–366–2221, Office of Infrastructure, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Utility Adjustments, Agreements, Eligibility Statements and Accommodation Policies.

OMB Control No.: 2125–0519 (formerly titled ''Developing and Recording Costs for Utility Adjustments'' with an expiration date of December 31, 2007).

Background: Federal laws dealing with the relocation and accommodation of utility facilities associated with the right-of-way of highway facilities are contained in the United States Code (U.S.C.) 23, Sections 123 and 109(I)(1). Regulations dealing with the utility facility accommodation and relocation are based upon the laws contained in 23 U.S.C. and are found in the Code of Federal Regulations (CFR), Title 23, Chapter I, Subchapter G, Part 645, subparts A and B.

The FHWA requires (23 CFR part 645 subpart A—Utility Relocations, Adjustments, and Reimbursement) developing and recording costs for utility adjustments, as the basis for reimbursing State Departments of Transportation (SDOT's) and local agency transportation departments, when they have paid the costs of utility facilities relocations that were required by the construction of Federal-aid highway projects. The FHWA requires the utility companies to document the costs or expenses for adjusting their facilities. These utility companies must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the SDOT or local transportation department to the utility company. In turn the FHWA reimburses the SDOT or local transportation department for its payment to the utility company. The utility company is required to maintain these records of costs for 3 years after final payment is received.

The SDOT and/or local agency transportation departments are responsible for maintaining the highway rights-of-way, including the control of its use by the utility companies. In managing the use of the highway rights-of-way, the SDOT and/or local agency transportation department is required (23 CFR 645.205 and 23 CFR 645.213) to document the terms under which utility facilities are allowed to cross or otherwise occupy the highway rights-of-way, in the form of utility use and occupancy agreements (*formerly OMB Control No.:* 2125–0522) with each utility company. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the SDOT and/or local agency transportation department.

Each SDOT's is required (23 CFR 615.215) to submit to the FHWA a utility adjustment eligibility statement (*formerly OMB Control No.:* 2125–0515) that establishes the SDOT's legal authority and policies it employs for accommodating utilities within highway right-of-ways or obligation to pay for utility adjustments. FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. Updated statements may be submitted for review at the States discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local SDOT's legal basis for payment of utility adjustments differs from that of the State.

Each SDOT's is also required (23 CFR 645.215) to develop and submit to FHWA their utility accommodation policies (*formerly OMB Control No.:* 2125–0514) that will be used to regulate

and manage the utility facilities within the rights-of-way of Federal-aid highway projects. The agencies utility accommodation policies need to address the basis for utility facilities to use and occupy highway right-of-ways; the State's authority to regulate such use; and the policies and/or procedures employed for managing and accommodating utilities within the right-of-ways of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the SDOT may take any action required in accordance with the approved policy statement without a case-by-case review by the FHWA. In addition, the utility accommodation policy statements that have been approved previously by the FHWA are periodically reviewed by the SDOT's to determine if updating is necessary to reflect policy changes.

Respondents: 52 SDOT's, including the District of Columbia and Puerto Rico, local agency transportation departments, and utility companies.

Frequency: Developing and recording costs and expenses for utility adjustments are submitted as they occur during the year (annually) by utility companies to SDOTs or local agency transportation departments. The SDOT's and local agency transportation departments are each involved in an average of 15 utility use and occupancy agreements (or permits) per year for an annual frequency of 46,000. SDOT's are allowed to submit their eligibility statement for utility adjustments and their utility accommodation policies when warranted by changes or updates occur, or at the SDOT's discretion. It is estimated 10 SDOT's will update either their eligibility statement for utility agreements or utility accommodation policies per year.

Estimated Average Annual Burden per Response: The estimated average amount of time required to develop and record the costs for each utility adjustment is 8 hours. The estimated amount of time required by the SDOT's and local agency transportation departments to process each utility use and occupancy agreement (permit) is 8 hours. The estimated amount of time for each update to the SDOT's eligibility statement for utility adjustments has an average burden of 18 hours. The estimated amount of time for each update and submittal of a SDOT's utility accommodation policy has an average burden of 280 hours.

Estimated Total Annual Burden Hours: The annual burden associated with developing and recording the costs for adjusting utility facilities is 72,000 hours based on an estimate of 9,000 adjustments that utility companies perform annually that may be eligible for Federal-aid highway funding allowing SDOT's or local agency transportation departments to request reimbursement from FHWA. The annual burden associated with preparing, submitting and approving utility use and occupancy agreements (permits) is 552,000 burden-hours. The annual burden associated with developing and approving updates to SDOT's eligibility statement for utility adjustments is 90 hours. The annual burden associated with developing and approving updates to SDOT's utility accommodation policies is 1,400 hours. The accumulated burden for the combined information collection is 625,490.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 27, 2007.

Judi Kane,

Team Leader, Information Services Team.

[FR Doc. E7–17339 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed 6th Street Viaduct Seismic Improvement Project in the city and county of Los Angeles, California in accordance with the National Environmental Policy Act of 1969 (NEPA).

FOR FURTHER INFORMATION CONTACT: Steve Healow, Project Development Engineer, FHWA, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, telephone: (916) 498–5849.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans, will prepare an EIS on a proposal to seismically improve the 6th Street Viaduct in the city and county of Los Angeles, California. The proposed improvements would involve retrofitting or demolition and replacement of the existing viaduct over the Los Angeles River between Mateo and Mill Streets on the west side, and west of Interstate 5 on the east side, for a distance of approximately 0.9 miles.

The 6th Street Viaduct, built in 1932, is one of 12 historic bridges/viaducts crossing the Los Angeles River. The concrete elements of the 3,500 foot long 6th Street Viaduct are degraded by an ongoing chemical reaction, known as Alkali Silica Reaction (ASR), which has led to substantial deterioration of the structure and decrease of its concrete strength, rendering it vulnerable to collapse in a major earthquake. This ASR deterioration of the 6th Street Viaduct has been occurring for at least 75 years, despite ongoing efforts to arrest or limit its effect. While the deteriorated surface appearance of the viaduct is of concern, its underlying structural integrity is of much greater concern. In 1989, the Whittier Narrows earthquake caused damage to shear keys and caused a column crack at Bent 33 of the viaduct. The structure has since been classified by Caltrans as Category I and placed on the mandatory seismic retrofit list.

The proposed project would result in a structure capable of withstanding a moderate seismic event by either retrofitting the existing structure or replacing it entirely. Several alternatives were considered during the project development phase. Criteria used to identify alternatives to be carried forward for detailed analysis in the environmental document include construction and maintenance costs, life span of the facility, constructability, historic preservation, community disruption, and seismic and operational safety. Based on the results of public pre-scoping meetings and preliminary screening analysis, a No Build Alternative and two Build Alternatives, including Viaduct Retrofit and Viaduct Replacement, will be analyzed in the environmental document.

The project team has met with the general public and neighborhood groups, and a Community Advisory Committee has been actively engaged. Public information activities, including meetings with the project development team, will continue throughout the design and environmental process. Public and agency scoping meetings are scheduled on August 14th and 16th in Los Angeles. A subsequent public hearing on the draft EIS will be held to discuss alternatives and impacts of the proposed action. Public notices will be published and posted on the project Web site containing the specific time and place of the public scoping meetings and hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions about this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 27, 2007.

Steve Healow,

Senior Project Development Engineer, Sacramento, California.

[FR Doc. E7–17301 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28825]

Agency Information Collection Activities; Revision of an Approved Information Collection: Training Certification for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests approval to revise and extend an information collection (IC) entitled, ''Training Certification for Entry-Level Commercial Motor Vehicle (CMV) Operators,'' that relates to the prerequisite training requirements for drivers of vehicles for which a commercial driver's license (CDL) is required. On May 23, 2007, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received.

DATES: Please send your comments by October 1, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention: DOT/FMCSA Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Telephone: 202–366–4235; e-mail *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126–0028.

Type of Request: Revision of a currently-approved information collection.

Respondents: Entry-level CDL drivers.

Estimated Number of Respondents: 45,611.

Estimated Time per Response: 10 minutes.

Expiration Date: September 30, 2007.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 7,602 hours. FMCSA estimates that an entry-level driver requires approximately 10 minutes to complete the tasks necessary to comply with the regulation. Those tasks are: Photocopying the training certificate, giving the photocopy to the motor carrier employer, and placing the original of the certificate in a personal file. Therefore, the annual burden for all entry-level drivers is (45,611 × 10/60) = 7,602 hours (rounded).

Background: The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*) established national minimum testing and licensing standards for operators of large trucks and buses. Congress sought to ensure that drivers of large trucks and buses possessed the knowledge and skills necessary to operate these vehicles. The CMVSA established the ''Commercial Drivers License'' program and directed the Federal Highway Administration (FHWA), FMCSA's predecessor agency, to establish minimum Federal standards that States must meet when licensing CMV drivers. The CMVSA applies to most operators of CMVs in interstate or intrastate commerce, including employees of Federal, State and local governments. Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991) directed the FHWA to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of CMVs.'' In 1993, the FHWA received public comments and began a study of the effectiveness of the training of entry-level drivers by the private sector. The study found that the heavy truck, motor coach, and school bus segments of the industry were not providing adequate entry-level training. In 2003, FMCSA proposed mandatory training for operators of CMVs, and in 2004, published a final rule on the topic. On June 11, 2004, OMB approved the information collection associated with the 2004 rule for a period of three years, or until September 30, 2007.

Definitions: ''Commercial Motor Vehicle'': This rule applies to the operators of CMVs for which a CDL is required by 40 CFR part 383; i.e. those vehicles (1) having a gross vehicle weight rating of 26,001 pounds or more, regardless of actual weight, (2) designed to transport 16 or more passengers including the driver, or (3) used to transport certain placardable and dangerous hazardous materials (49 CFR part 383.5). The training requirements of this rule apply to drivers with 1 year or less experience operating a vehicle for which a CDL is required (49 CFR 380.502(b)).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 21, 2007.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E7–17325 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28536]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 18 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before October 1, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket

Number FMCSA–2007–28536 using any of the following methods:

- DOT Web site: Go to *http://dmses.dot.gov.* Follow the on-line instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: Room W12–140 on the West Building ground floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://dms.dot.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 18 individuals listed in this notice each have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Stephen B. Atkinson

Mr. Atkinson, age 37, has had ITDM since 1977. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Atkinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Arizona.

Thomas G. Blatchley, Jr.

Mr. Blatchley, 36, has had ITDM since 1983. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blatchley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida, which allows him to operate any non-commercial vehicle with a gross vehicle weight rating of less than 26,001 pounds.

George T. Brawner

Mr. Brawner, 62, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brawner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Kentucky.

Anthony J. Clark

Mr. Clark, 41, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to operate any motor vehicle with a gross vehicle rating of less than 26,001 pounds.

Jim E. Chester

Mr. Chester, 48, has had ITDM since 1970. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chester meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Brian S. Fenley

Mr. Fenley, 32, has had ITDM since 2002. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fenley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Carroll D. Fetcher

Mr. Fetcher, 68, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fetcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

James R. Hudson

Mr. Hudson, 31, has had ITDM since 2002. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hudson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Gaines E. Mathis

Mr. Mathis, 69, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mathis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Thomas F. Meade

Mr. Meade, 74, has had ITDM since 2001. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

Jerry D. Schoolman

Mr. Schoolman, 52, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schoolman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Michael Shuler

Mr. Shuler, 37, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shuler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL Washington, DC.

Kenneth G. Steinkamp

Mr. Steinkamp, 57, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steinkamp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Mark T. Swanberg

Mr. Swanberg, 63, has had ITDM since 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swanberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Chad L. Udy

Mr. Udy, 34, has had ITDM since 1980. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Udy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Utah.

Ronald C. Vertucci, Jr.

Mr. Vertucci, 43, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vertucci meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006

and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jeffrey S. Volkman

Mr. Volkman, 32, has had ITDM since 2002. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Volkman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to operate any motor vehicle with a gross vehicle rating of less than 26,001 pounds.

Kendall H. Wilson

Mr. Wilson, 47, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated earlier in the dates section of the Notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: August 27, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–17348 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–22–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28676]

Clearwater Port LLC, Clearwater Port Liquefied Natural Gas Deepwater Port License Application

AGENCY: Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration announce that they have received an application for the licensing of a natural gas deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: The Deepwater Port Act of 1974, as amended, requires any public hearing on this application to be held not later than 240 days after this notice, and requires a decision on the application to be made not later than 90 days after the final public hearing.

ADDRESSES: The public docket is maintained by the: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

The docket bears a U.S. Coast Guard identifying number, USCG–2007–28676, which should be included in your submission, because the Coast Guard handles much of the processing for each license application. Docket contents are available for public inspection and copying, at this address, in room W12–140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, at (202) 372–1449 or *Raymond.W.Martin@uscg.mil,* Kevin Tone, U.S. Coast Guard, at (202) 372–1441 or *Kevin.P.Tone@uscg.mil,* or Mr. Scott Davies, U.S. Maritime Administration, at (202) 366–2763 or *Scott.Davies@dot.gov.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Receipt of Application

On July 5, 2006, the Maritime Administration received an application from Clearwater Port LLC for all Federal authorizations required for a license to own, construct, and operate a deepwater port governed by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 et seq. (the Act). On August 23, 2007, the Maritime Administration determined that the application contains all information required by the Act.

Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed by the Secretary of Transportation. Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 et seq. and in 33 CFR part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are processed by the U.S. Coast Guard and the Maritime Administration. Each application is considered on its merits.

The Act provides strict deadlines for processing an application. Once we determine that an application contains the required information, we must hold public hearings on the application within 240 days, and the Secretary of Transportation must render a decision on the application within 330 days. We will publish additional **Federal Register** notices to inform you of these public hearings and other procedural milestones, including environmental review. The Secretary's decision, and other key documents, will be filed in the public docket.

At least one public hearing must take place in each adjacent coastal State. For purposes of the Act, California is the adjacent coastal State for this application. Other States can apply for adjacent coastal State status in accordance with 33 U.S.C. 1508(a)(2).

Summary of the Application

Clearwater Port LLC (a subsidiary of NorthernStar Natural Gas, LLC) is proposing to construct Clearwater Port, an offshore liquefied natural gas receiving terminal and regasification facility located in federal waters approximately 10.5 miles offshore of the coast of Oxnard, California in Federal Outer Continental Shelf (OCS) Lease Block OCS–P 0217. Clearwater Port would be comprised primarily of Platform Grace, an offset dual berth (ODB) Satellite Service Platform that would be installed adjacent to Platform Grace for docking of the LNG carriers; and a new 36-inch subsea pipeline to transport vaporized natural gas from the platform connecting at a junction point onshore at a Southern California Gas Company (SoCalGas) pipeline located in Rancho Santa Clara near Camarillo, California. The pipeline would come ashore within the Reliant Energy Mandalay Power Generating Station and connect with a new gas receiving and metering facility. The onshore components of the project would consist of approximately 63 miles of new pipeline by expanding the SoCalGas pipeline system as follows: A 36-inch pipeline extending 12.9 miles from the Reliant Energy Mandalay Power Generating Station to the existing Center Road Station; a 36-inch pipeline extending 37 miles to loop the existing Line 324 for transport of additional capacities from the Center Road Station to the existing Saugus Station; an 8.75-mile leg of 36-inch pipeline to loop the existing Line 225 for transport of additional capacities from the existing Honor Rancho Station to the Quigley Station; and, a final 4.5-mile leg of 36-inch pipeline to extend the existing Line 3008 (currently from the Quigley Valve Station to the Newhall Valve Station) for transport of additional capacities from the existing Quigley Valve Station to the existing Balboa Station.

The deepwater port would be able to receive approximately 139 LNG carriers annually and accommodate two LNG carriers ranging from 70,000 m^3 to 220,000 m^3 in capacity. The carriers would transfer LNG one carrier at a time through a conventional marine loading arm system to the platform via a cryogenic pipe-in-pipe where it would be regasified by an ambient air vaporizer (AAV) system. The AAV would have the capacity to achieve an average hourly rate of 2300 m^3, an average daily gas send-out of 1.2 Bcfd and a peak send-out capacity of 1.4 Bcfd. Construction of the deep water port would be expected to take three (3) years; with start-up of commercial operations following construction, should a Federal license and the required California State lease and permits be issued. The deep water port would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 30 years.

(Authority 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: August 27, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–17326 Filed 8–30–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Funding Opportunity Title: Notice of Funds Availability (NOFA) Inviting Applications for the FY 2008 Funding Round of the Community Development Financial Institutions (CDFI) Program; Announcement Type: Initial Announcement of Funding Opportunity

(Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.)

DATES: Applications for the FY 2008 funding round of the CDFI Program must be received by 5 p.m. ET on Wednesday, October 31, 2007.

EXECUTIVE SUMMARY: Subject to funding availability, this NOFA is issued in connection with the FY 2008 funding round of the CDFI Program.

I. Funding Opportunity Description

A. Through the CDFI Program, the Fund provides: (i) Financial Assistance (FA) awards to CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR Part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability:

1. *FY 2008 Funding Round:* Through this NOFA, and subject to funding availability, the Fund expects that it may award approximately $26 million in appropriated funds, of which: (i) Approximately $2 million in appropriated funds may be awarded to Category I/SECA Applicants in the form of FA awards and TA grants; (ii) approximately $22 million in appropriated funds may be awarded to Category II/Core Applicants in the form of FA awards and TA; and (iii)

approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $26 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $22 million to Category II/Core Applicants, and/or more or less than $2 million to TA-only Applicants) in the FY 2008 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *Availability of Funds for the FY 2008 Funding Round of the CDFI Program:* Funds for the FY 2008 funding round of the CDFI Program (the FY 2008 Funding Round) have not yet been appropriated. If funds are not appropriated for the FY 2008 Funding Round, there will not be a FY 2008 Funding Round. Further, it is possible that if funds are appropriated for the FY 2008 Funding Round, the amount of such funds may be greater than or less than the amounts set forth above. Further, if funds for the FY 2008 funding round of the Native American CDFI Assistance (NACA) Program are not appropriated, entities that are eligible to apply for CDFI Program funds and that might otherwise have applied for NACA Program funds, are encouraged to apply for CDFI Program funds through the FY 2008 Funding Round.

B. *Types of Awards:* An Applicant may submit an application either for: (i) A FA award only; (ii) a FA award and a TA grant; or (iii) a TA grant only.

1. *FA Awards:* FA is intended to provide flexible financial support to CDFIs so that they may achieve the strategies outlined in their Comprehensive Business Plans. A FA award can be requested by an Applicant for use in the following four categories of activity: Financial Products, Loan Loss Reserves, Capital Reserves, and/or Operations. For purposes of this NOFA, Financial Products means: loans, grants, equity investments and similar financing activities, including the purchase of loans originated by certified CDFIs and the provision of loan guarantees, in its Target Market, or for related purposes that the Fund deems appropriate. Loan Loss Reserves means: funds that the Applicant will set aside in the form of cash, or through accounting-based accrual, reserves to cover losses on loans, accounts and notes receivable made in its Target Market. Capital Reserves means: funds that the Applicant will set aside in the form of reserves to support the Applicant's ability to leverage other capital, such as by increasing its net assets, to serve the financing needs of its Target Market, or for related purposes that the Fund deems appropriate. Operations means: funds that the Applicant will use to undertake Development Services, Financial Services, and/or for related purposes that the Fund deems appropriate. The most common use of FA is for the Applicant's Financial Products: A FA award can be a critical source of funding to support the Applicant's community development lending activities. The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award to a Category I/SECA Applicant on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. TA Grants

(a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application and the applicable budget chart.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in a scope of work, to include information regarding the expected cost, the likely provider of the TA, a description of the anticipated timing of the expenditures, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact and/or to become certified as a CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a CDFI. TA funds must be used to support the Applicant's activities; TA funds cannot be used to support the creation of a new entity or activities of an entity.

C. *Notice of Award; Assistance Agreement:* Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see sections VI.A and VI.B of this NOFA.

III. Eligibility Information:

A. *Eligible Applicants:* The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *FA Applicant Categories:* All Applicants for FA awards through this NOFA must meet the criteria for one of the following two categories:

FA applicant category	Criteria	What can it apply for?
Category I/Small and/or Emerging CDFI Assistance (SECA)	A Category I/SECA Applicant is a Certified CDFI that: Has total assets, as of the end of the Applicant's most recent fiscal year end or September 30, 2007, as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million • Insured Credit Unions: up to $10 million • Venture capital funds: up to $10 million • Other CDFIs: up to $5 million or ..... Began operations on or after January 1, 2004 and Prior to the application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to $100,000 in TA funds.
Category II/Core	A Category II/Core Applicant is a Certified CDFI that meets all other eligibility requirements described in this.	A Category II/Core Applicant may request up to and including $2 million in FA funds, and up to $100,000 in TA funds.

Please note: any Applicant, regardless of total assets, years in operation, or prior Fund awards, that requests FA funding in excess of $500,000 is classified as a Category II/Core Applicant. For the purposes of this NOFA, the term ''began operations'' is defined as the financing activity start date indicated in the Applicant's myCDFIFund account. Also, for purposes of this NOFA, the term ''Native Initiatives Funding Programs'' refers to the Native American CDFI Assistance (NACA) Program and all prior funding programs, through which funds are no longer available, including the Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development (NACD) Program, and the Native American Technical Assistance (NATA) Component of the CDFI Program.

The Fund will evaluate, rank and make awards to Category I/SECA Applicants separately from Category II/Core Applicants. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

2. *TA Applicants:*

TA applicants	Criteria	What can it apply for?
All TA Applicants	A TA Applicant must be a Certified CDFI, a Certifiable CDFI, or an Emerging CDFI.	The Fund anticipates making TA grants up to $100,000 each.

The Fund, in its sole discretion, reserves the right to award amounts less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

3. *CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified CDFIs and Certifiable CDFIs; eligible TA Applicants include Certified CDFIs, Certifiable CDFIs and Emerging CDFIs, defined as follows:

(a) *Certified CDFIs:* A certified CDFI whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than Wednesday, October 17, 2007, or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov.* Please note: the Fund provided a number of CDFIs with certifications expiring in 2003 through 2008 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable CDFIs:* For purposes of this NOFA, a Certifiable CDFI is an entity from which the Fund receives a complete CDFI Certification Application no later than Wednesday, October 17, 2007, or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable CDFIs please note: while your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging CDFIs:* For purposes of this NOFA, an Emerging CDFI is an entity that demonstrates to the satisfaction of the Fund that it has a reasonable plan to be certified as a CDFI by December 31, 2010 or such other date selected by the Fund. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a CDFI by a certain date.

4. *Limitation on Awards:* An Applicant may receive only one award through the CDFI Program in the funding round. A CDFI Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations;

refer to the Interim Rule at 12 CFR 1805.102).

5. *Contacting the Fund.* The Fund will respond to questions and provide support concerning CDFI certification related to the FY 2008 Funding Round between the hours of 9 a.m. and 5 p.m. ET, through Monday, October 15, 2007. The Fund will not respond to questions or provide support concerning CDFI certification, related to the FY 2008 Funding Round, that are received after 5 p.m. ET on Monday, October 15, 2007. The CDFI Certification Application and other information regarding CDFI certification may be obtained from the Fund's Web site at *http://www.cdfifund.gov.*

D. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap:* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period extends back three years from the date that the Fund signs a Notice of Award; for purposes of this NOFA, and for ease of administration, the Fund will consider any assistance documented with a Notice of Award dated between July 31, 2005 and July 31, 2008 (which is the anticipated date that the Fund will issue Notices of Award for the FY 2008 Funding Round).

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) Within the 12-month period prior to the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) Within the 12-month period prior to the applicable application deadline, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA.

6. *Undisbursed award funds:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOFA are included (''includable BEA awards''). Thus, for purposes of this NOFA, undisbursed BEA Program award funds are the amount of FYs 2002, 2003 and 2004 awards that remain undisbursed as of the application deadline of this NOFA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives

Funding Programs, only awards made to the Applicant (and any Affiliates) two to five calendar years prior to the end of the calendar year of this NOFA are included (''includable CDFI/NI awards''). Thus, for purposes of this NOFA, undisbursed CDFI Program and NI awards are the amount of FYs 2002, 2003, 2004 and 2005 awards that remain undisbursed as of the application deadline of this NOFA.

To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOFA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation on the Fund's Web site, found in the Q&A document for the FY 2008 Funding Round.

The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated in writing by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the application deadline of this NOFA. An Applicant that is unsure about the disbursement status of any prior award should contact the Fund's Financial Manager via e-mail at *CDFI.disburseinquiries@cdfi.treas.gov* for more information, no less than thirty (30) calendar days prior to the application deadline of this NOFA. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed award funds) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as was declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants under this NOFA.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Disbursement questions should be directed to Grants Management via e-mail to *grantsmanagement@cdfi.treas.gov.* Reporting and compliance questions should be directed to Compliance, Monitoring and Evaluation (CME) by e-mail to *cme@cdfi.treas.gov.* Telephone calls to Grants Management and CME should be directed to (202) 622–8226; facsimiles to (202) 622–7754; and mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, October 29, 2007 (two business days before the application deadline). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on said date, until after the funding application deadline.

9. *Other Targeted Populations as Target Markets:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: a person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino''); and

(d) Native Hawaiian: a person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: a person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

E. Matching Funds

1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are

eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's website for further information.

2. *Matching Funds Requirements Per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline of this NOFA. Specifically, FA Applicants must meet the following matching funds requirements: (a) *Category I/SECA Applicants:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2009 (with required documentation of such receipt received by the Fund not later than March 31, 2009), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2009.

(b) *Category II/Core Applicants:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2009 (with required documentation of such receipt received by the Fund not later than March 31, 2009), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

3. Matching Funds Terms Defined; Required Documentation

(a) ''*Matching funds in-hand*'' means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, deposit, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) The Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The Fund will assess the likelihood of this increase during the application review process. An award will not be made to any Applicant that has not demonstrated that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2006 and December 31, 2007, as demonstrated by the corresponding NCUA report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as was declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) It can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as was declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide

matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand the required matching funds by December 31, 2008 (with required documentation of such receipt received by the Fund not later than December 15, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than the required matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by December 31, 2008. In the case of item (ii) of this paragraph, the CDFI Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. *Form of Application Submission:* Applicants may submit applications under this NOFA only electronically, through Grants.gov. Applications sent by mail, facsimile or other form will not be accepted. The Fund will not accept applications in paper form, other than the assigned signature page and certain paper attachments, as specified below and in the application.

B. *Grants.gov:* For the FY 2008 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund will post to its Web site at *http://www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. The application instructions will be posted as soon as they are available and once the application materials are accessible through Grants.gov. The anticipated release date for the application instructions is Thursday, August 30, 2007. Applicants are encouraged to start the registration process now at *http://www.Grants.gov* as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

C. *Application Content Requirements:* Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 **Federal Register** 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An electronic application that does not include an EIN is incomplete and cannot be transmitted to the Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

D. *MyCDFIFund Accounts:* All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. An Applicant must be registered as both a User and an Organization in myCDFIFund as of the applicable application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. *Application Deadlines:* Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on Wednesday, October 31, 2007. In addition, Applicants that submit electronic applications must separately submit (by mail or other courier/delivery service) a signature page, signed by the Applicant's Authorized Representative, and all other required paper attachments; said documents must be received at the address set forth below by 5 p.m. ET on Friday, November 2, 2007.

2. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected. An application submitted via Grants.gov and all required paper attachments must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services. Any application that is deemed ineligible will not be returned to the Applicant.

F. INTERGOVERNMENTAL REVIEW: Not applicable.

G. FUNDING RESTRICTIONS: For allowable uses of FA proceeds, please see the Interim Rule at 12 C.F.R. 1805.301.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application on a 100-point scale using numeric scores with respect to the following five sections:

1. *Market Analysis* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA.

2. *Business Strategy* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate (i) The Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that: (i) It has a record of success in serving said Investment Area(s) or Targeted Population(s); (ii) it will offer more Financial Products or Development Services and/or increase the volume of its current activities in the Target Market; and/or (iii) it will expand its operations into a larger Target Market.

4. *Management* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (TA-only Applicants: 10 points; Category I/SECA: 10 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds by March 14, 2009.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the Comprehensive Business Plan, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. The Fund will assess the reasonableness of the plan to become certified by December 31, 2010, taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. Review and Selection Process

1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application does not meet eligibility requirements and will be rejected. Any application that does not meet eligibility requirements will not be returned to the Applicant.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone, e-mail, mail, or through an on-site visit for the sole purpose of obtaining clarifying or confirming application information (such as statements of work, résumés, EINs, Duns numbers, for example). After submitting its application, the Applicant will not be permitted to revise or modify its application in any way nor attempt to negotiate the terms

of an award. If contacted for clarifying or confirming information, the Applicant must respond within the time parameters set by the Fund.

3. *Application Scoring; Ranking:*

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in Calendar Year 2007 in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA; (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2004, FY 2005 or FY 2006 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the CDFI Program. All questions regarding outstanding reports or compliance should be directed to Compliance, Monitoring and Evaluation by e-mail to *cme@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, October 29, 2007.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, as follows:

(i) *TA-only Applicants and Category I/SECA Applicants* will be ranked from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

(ii) *Category II/Core Applicants* must receive scores in both the Management category and the Financial Health and Viability category that each equal at least 50 percent of the available points in each of those sections. For Category II/Core Applicants that exceed this threshold, the Fund will use the combined scores of the Market Analysis, Business Strategy, and Community Development Performance and Effective Use categories to rank such Applicants, highest to lowest.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. TA-only Applicants, Category I/SECA and Category II/Core Applicants will be ranked separately. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2008 or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by email using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant through its myCDFIFund account. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice

to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in any previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the application deadline, may not apply for a new award through the NOFA for another CDFI Fund program funding round after the date of said deobligation.

B. *Assistance Agreement:* Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance

Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) In the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. *Reporting*

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving Financial Assistance); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, October 29, 2007. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its website responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's website should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Management unit by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site is provided for illustrative purposes only and should not be relied on for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application

for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by email using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

The Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Kimberly A. Reed,

Director, Community Development Financial Institutions Fund.

[FR Doc. E7–17324 Filed 8–30–07; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8804, 8804 (Sch. A), 8805 and 8813

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), Form 8804 (Sch. A), Penalty for Underpayment of Estimated Section 1446 Tax by Partnerships, Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

DATES: Written comments should be received on or before October 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Robert Black at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Robert.G.Black@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); Form 8804 (Sch. A), Penalty for Underpayment of Estimated Section 1446 Tax by Partnerships; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

OMB Number: 1545–1119.

Form Number: 8804, 8804 Sch. A, 8805 and 8813.

Abstract: Internal Revenue Code section 1446 requires partnerships that are engaged in the conduct of a trade or business in the United States to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. The partnerships use Form 8813 to make payments of withholding tax to the IRS. They use Forms 8804 and 8805 to make annual reports to provide the IRS and affected partners with information to assure proper withholding, crediting to partners' accounts and compliance.

Current Actions: We added a new schedule (Sch. A) to Form 8804, and added 14 line items and 2 Code references to same form.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 30 hr., 59 min.

Estimated Total Annual Burden Hours: 154,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2007.

David C. Brown,

IRS Reports Clearance Officer.

[FR Doc. E7–17214 Filed 8–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–47, Relief

From Ruling Process For Making Late Reverse QTIP Election.

DATES: Written comments should be received on or before October 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Relief From Ruling Process for Making Late Reverse QTIP Election.

OMB Number: 1545–1898.

Revenue Procedure Number: Revenue Procedure 2004–47.

Abstract: Revenue Procedure 2004–47 provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6.

Estimated Annual Average Time per Respondent: 9 hours.

Estimated Total Annual Hours: 54.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 17, 2007.

David C. Brown,

IRS Reports Clearance Officer.

[FR Doc. E7–17215 Filed 8–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106012–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106012–98 (TD 8936), Definition of Contribution in Aid of Construction Under Section 118(c)(§ 1.118–2).

DATES: Written comments should be received on or before October 1, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Definition of Contribution in Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: REG–106012–98.

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Reporting Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 17, 2007.

David C. Brown,

IRS Reports Clearance Officer.

[FR Doc. E7–17218 Filed 8–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–44–94]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–44–94 (TD 8690), Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions (§§ 1.170A–13(f) and 1.6115–1).

DATES: Written comments should be received on or before October 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94.

Abstract: This regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The regulations affect donee organizations described in Internal Revenue code section 170(c) and individuals and entities that make payments to these organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 1,975,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2007.

David C. Brown,

IRS Reports Clearance Officer.

[FR Doc. E7–17220 Filed 8–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, and Form 1040EZ, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before October 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Chief, RAS:R:TSBR, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *ChiefTSBR@irs.gov*.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and

(3) in OMB's database of approved information collections.

The Individual Taxpayer Burden Model (ITBM) estimates the levels of burden experienced by individual taxpayers when complying with the Federal tax laws. This model reflects major changes over the past two decades in the way taxpayers prepare and file their returns; more than 85 percent of all individual tax returns are prepared utilizing computer software, either by the taxpayer or a paid provider, and less than 15 are prepared manually. The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return, e.g. with software or paid preparer, and the taxpayer's activities, e.g. recordkeeping and tax planning.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the Federal tax system. The time expended and the out-of-pocket costs are estimated separately. The methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels.

Indicators of complexity in tax laws as reflected in tax forms and instructions are incorporated in the model. The preparation methods are:

- Self-prepared without software;
- Self-prepared with software;
- Used a paid preparer.

The types of taxpayer activities measured in the model are:

- Recordkeeping;
- Form completion;
- Form submission (electronic and paper);
- Tax planning (this activity completed at individual taxpayer discretion);
- Use of services (IRS and paid professional);
- Gathering tax materials.

The methodology incorporates results from a burden survey of 14,932 taxpayers conducted in 2000 and 2001, and estimates taxpayer burden based on those survey results. Summary level results using this methodology are presented in the table below.

Taxpayer Burden Estimates

Time burden is broken out by taxpayer activity. The largest component of time burden is record keeping at roughly 58 percent for all taxpayers, as opposed to form completion and submission at only about 14 percent. In addition, the time burden associated with form completion and submission activities are closely tied to preparation method. That is, these time burden estimates fluctuate according to preparation method.

Both time and cost average burdens are national averages, and do not necessarily reflect a ''typical'' case. The average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ in 2006 was 26.5 hours, with an average cost of $207 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 had an average burden of 34.0 hours, and taxpayers filing Form 1040A and Form 1040EZ averaged 10.2 hours. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer and geographic area.

The data shown are the best estimates from tax returns filed for 2006 currently available as of July 20, 2007. The estimates are subject to change as new forms and data become available. The estimates do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer errors, implying a lower overall post-filing burden.

Taxpayer Burden Model

The tables below show burden estimates by form type for Tax Years 2004, 2005, and 2006. The data are being presented for these three years because the 2006 estimates are based on an updated version of the ITBM. This updated version takes into account technical adjustments using improved data on taxpayer filing activities. Note that changes in burden reported for TY 2004 and 2005 versus prior published estimates, reflect not a change in actual burden but rather a change in methodology. Therefore, three years of data are presented below, based on the new methodology to show relative changes in burden over the past three years.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to some of the forms. These changes have resulted in an overall increase of 361,564,830 total hours in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 133,912,900.

Total Estimated Time: 3.55 billion hours (3,548,691,850 hours).

Estimated Time per Respondent: 26.5 hours.

Total Estimated Out-of-Pocket Costs: $27.7 billion ($27,719,970,300).

Estimated Out-of-Pocket Cost per Respondent: $207.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 27, 2007.

David C. Brown,

IRS Reports Clearance Officer.

TABLE 1.—TAX YEAR 2006 TAXPAYER BURDEN ESTIMATES FOR INDIVIDUAL TAXPAYERS, BY ACTIVITY

Major form filed or type of taxpayer		Time burden (hours)						Money burden
		Average time						
	Percentage of returns	Average total time	Record keeping	Tax planning	Form completion	Form submission	All other	Average costs
All Taxpayers	100	26.5	15.3	4.5	3.3	0.5	2.8	$207
Major Forms Filed								
1040	68	34.0	20.3	5.9	3.8	0.6	3.4	268
1040A & 1040EZ	32	10.2	4.3	1.6	2.4	0.5	1.4	75
Type of Taxpayer								
Wage and Investment	72	14.1	5.8	3.2	3.0	0.5	1.6	114
Self-Employed	28	58.1	39.5	7.9	4.3	0.7	5.8	444

TABLE 2.—TAX YEAR 2005 TAXPAYER BURDEN ESTIMATES FOR INDIVIDUAL TAXPAYERS, BY ACTIVITY

Major form filed or type of taxpayer		Time burden (hours)						Money burden
		Average time						
	Percentage of returns	Average total time	Record keeping	Tax planning	Form completion	Form submission	All other	Average costs
All Taxpayers	100	26.0	14.8	4.5	3.3	0.5	2.8	$195
Major Forms Filed								
1040	68	33.4	19.8	5.9	3.7	0.6	3.4	253
1040A & 1040EZ	32	10.0	4.1	1.6	2.4	0.5	1.4	71
Type of Taxpayer								
Wage and Investment	72	13.8	5.6	3.2	2.9	0.5	1.6	107
Self-Employed	28	57.0	38.4	7.9	4.2	0.7	5.8	420

TABLE 3.—TAX YEAR 2004 TAXPAYER BURDEN ESTIMATES FOR INDIVIDUAL TAXPAYERS, BY ACTIVITY

Major form filed or type of taxpayer		Time burden (hours)						Money burden
		Average time						
	Percentage of returns	Average total time	Record keeping	Tax planning	Form completion	Form submission	All other	Average costs
All Taxpayers	100	25.4	14.6	4.2	3.3	0.5	2.8	$185
Major Forms Filed								
1040	68	32.5	19.5	5.4	3.7	0.6	3.4	242
1040A & 1040EZ	32	9.8	4.1	1.5	2.4	0.5	1.4	62
Type of Taxpayer								
Wage and Investment	72	13.4	5.5	2.9	2.9	0.5	1.6	97
Self-Employed	28	55.8	37.9	7.3	4.2	0.7	5.7	408

Note: Detail may not add to total because of rounding.

APPENDIX

Form	Filed by individuals and others	Title
1040		U.S. Individual Income Tax Return.
1040 A		U.S. Individual Income Tax Return.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 X		Amended U.S. Individual Income Tax Return.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.

APPENDIX—Continued

Form	Filed by individuals and others	Title
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040 A–SCH 1		Interest and Ordinary Dividends for Form 1040A Filers.
1040 A–SCH 2		Child and Dependent Care Expenses for Form 1040A Filers.
1040 A–SCH 3		Credit for the Elderly or the Disabled+F66 for Form 1040A Filers.
1040 ES–E		Estimated Tax for Individuals.
1040 ES–OCR		Estimated Tax for Individuals (Optical Character Recognition Without Form 1040V).
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 ES/V–OCR		Estimated Tax for Individuals (Optical Character Recognition With Form 1040V)
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 V		Payment Voucher.
1040 V–OCR		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106 EZ		Unreimbursed Employee Business Expenses.
2106		Employee Business Expenses.
2120		Multiple Support Declaration.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555 EZ		Foreign Earned Income Exclusion.
2555		Foreign Earned Income.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.
4070		Employee's Report of Tips to Employer.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4136	X	Credit for Federal Tax Paid On Fuels.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852		Substitute for Form W–2 or Form 1099–R.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.

APPENDIX—Continued

Form	Filed by individuals and others	Title
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH N	X	Return of Officers, Directors, and 10%-or-More Shareholders of a Foreign Person Holding Company.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5713	X	International Boycott Report.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used as Fuel.
6765	X	Credit for Increasing Research Activities.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8271	X	Investor Reporting of Tax Shelter Registration Number.
8275 R	X	Regulation Disclosure Statement.
8275	X	Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453 OL		U.S. Individual Income Tax Declaration for an IRS e-file Online Return.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582 CR	X	Passive Activity Credit Limitations.
8582	X	Passive Activity Loss Limitations.
8586	X	Low-Income Housing Credit.
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609 SCH A	X	Annual Statement.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Children Under Age 14 With Investment Income of More Than $1,600.
8621 A	X	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8830	X	Enhanced Oil Recovery Credit.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8836 SCH A		Third Party Affidavit.
8836 SCH B		Third Party Affidavit.
8836 SP		Comprobante de Residencia para los Hijos(as) Calificados(as).
8836 SP–SCH A		Declaracion Jurada del Tercero.
8836 SP–SCH B		Declaracion Jurada del Tercero.
8836		Qualifying Children Residency Statement.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.

APPENDIX—Continued

Form	Filed by individuals and others	Title
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information to Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865 SCH K–1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8865	X	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forcast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878 SP		Autorizacion de firma para presentar por medio del IRS e-file—Solicitud de prorroga del plazo.
8878		IRS e-file Signature Authorization for Application for Extension of Time to File.
8879 SP		Autorizacion de firma para presentar por medio del IRS e-file.
8879		IRS e-file Signature Authorization.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Cana
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8901		Information on Qualifying Children Who Are Not Dependents (For Child Tax Credit Only).
8903	X	Domestic Production Activities Deduction.
9465 SP		Peticion para un Plan de Pagos a Plazos.
9465		Installment Agreement Request.
SS–4	X	Application for Employer Identification Number.
SS–8	X	Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W–4 P		Withholding Certificate for Pension or Annuity Payments.
W–4 S		Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP		Certificado de descuentos del(la) empleado(a) para la retencion.
W–4 V		Voluntary Withholding Request.
W–4		Employee's Withholding Allowance Certificate.
W–5 SP		Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–5		Earned Income Credit Advance Payment Certificate.
W–7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP		Solicitud de Numero de Identicacion Personal del Contribuyente el Servicio de Impuestos Internos.
W–7		Application for IRS Individual Taxpayer Identification Number.
Notice 160920–05		Deduction for Energy Efficient Commercial Buildings.
8906		Distills Spirits Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount For Taxpayers Housing Individuals Displaced by Hurricane Katrina.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto sobre el Ingreso de los Estados Unidos.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
5695		Residential Energy Credits.
8888		Direct Deposit of Refund to More Than One Account.
8907		Nonconventional Source Fuel Credit.
8913	X	Credit For Federal Telephone Excise Tax Paid.

APPENDIX—Continued

Form	Filed by individuals and others	Title
8919	.....	Uncollected Social Security and Medicare Tax on Wages.

[FR Doc. E7–17232 Filed 8–30–07; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel (including the states of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Thursday, September 27, 2007 from 1 p.m. to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096. If you would like to have the TAP consider a written statement, please call Dave Coffman at the telephone numbers above or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: August 24, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–17222 Filed 8–30–07; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 2007 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 25, 2007.

DATES: September 25, 2007.

Time: Public meeting time: 9 a.m. to 11:30 a.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review candidate designs for the 2009 Abraham Lincoln Bicentennial One-Cent Coin Redesign, and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: August 27, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–17213 Filed 8–30–07; 8:45 am]
BILLING CODE 4810–02–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Correction to Notice of open public hearing—September 6, 2007, University of North Carolina–Chapel Hill, NC.

SUMMARY: The original Notice was published in the **Federal Register** on August 24, 2007 on page 47834. This correction changes the date to September 6, 2007.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate, and report to Congress annually on ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Chapel Hill, NC, at the University of North Carolina on September 6, 2007 on ''*North Carolina: China's Impact on the North Carolina Economy: Winners and Losers.*''

Background

This event is the seventh in a series of public hearings the Commission will hold during its 2007 report cycle to collect input from leading experts in academia, business, industry, government and from the public on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The September 6 hearing is being conducted to examine

the impacts of Chinese exports on North Carolina's traditional clothing, textile, and furniture industries; the effectiveness of North Carolina's proactive measures to mitigate and adapt to Chinese competition; and to consider feedback and opinions from the people of North Carolina.

The hearing, entitled ''*North Carolina: China's Impact on the North Carolina Economy: Winners and Losers*,'' will be co-chaired by Commissioners Jeffrey Fiedler and Dennis Shea.

Open Microphone Session for Public Comment: The hearing will conclude with a discussion on the community impact of economic dislocations and an ''open'' microphone session for interested members of the public to voice their views. Registration for the open microphone session begins at 8:30 am on Thursday, September 6th with sign up available in the hearing room. Comments will be limited to 5 minutes for each participant.

Information on this hearing, including a detailed hearing agenda and information about panelists, will be made available on the Commission's Web site prior to the hearing date. Detailed information about the Commission, the texts of its annual reports and hearing records, and the products of research it has commissioned can be found on the Commission's Web site at *http://www.uscc.gov*.

Any interested party may file a written statement by September 6, 2007, by mailing to the contact below.

DATE AND TIME: Thursday, September 6, 2007, 8:30 a.m. to 5:30 p.m. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESS: The hearings will be held in The Kenan Conference Center, Room 204 at the University of North Carolina–Chapel Hill campus on Skipper Bowles Road, Chapel Hill, NC 27599–1550. Public seating is limited to approximately 150 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov*.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: August 28, 2007.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E7–17298 Filed 8–30–07; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on CARES Business Plan Studies will hold a meeting on September 17, 2007, at the University of Massachusetts/Boston, Columbia Point, Campus Center Ballroom in Boston, Massachusetts. The meeting will convene at 1 p.m. and conclude at 6:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset Realignment for Enhanced Services (CARES) Decision document.

The objective of this meeting is to provide the Secretary with advice regarding the final selection of a healthcare, capital planning and reuse option for the Greater Boston area campuses of the VA New England Healthcare System. An analysis of the business planning options completed by the VA contractor is to be presented at the meeting prior to their final submission to the VA. The agenda will also accommodate public commentary on the options.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, please contact Mr. Jay Halpern, Designated Federal Officer, (00 CARES), at 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–5994, or by e-mail at *jay.halpern@va.gov.*

Dated: August 27, 2007.

By direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 07–4279 Filed 8–30–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on October 12, 2007 in Room 830 from 8:30 a.m. to 3 p.m. at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of VHA's public relations campaign, an update on the budget, an update on information technology security, a briefing on relationships between VA and the Department of Defense, and an update on academic affiliations.

Any member of the public wishing to attend should contact Juanita Leslie, Designated Federal Officer, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 461–7019. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Juanita Leslie before the meeting or within 10 days after the meeting.

Dated: August 27, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–4278 Filed 8–30–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 169

Friday, August 31, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2005–22840; Amendment No. 25–121]

RIN 2120–AI14

Airplane Performance and Handling Qualities in Icing Conditions

Correction

In rule document E7–14937 beginning on page 44656 in the issue of Wednesday, August 8, 2007, make the following corrections:

§ 25.125 [Corrected]

1. On page 44667, in the first column, in § 25.125(b)(2)(ii)(B), in the first line, ''$V_{SR}0$'' should read ''V_{SR0}''.

Apendix C of Part 25 [Corrected]

2. On page 44669, in the second column, in Appendix C of Part 25, in the third line, ''(-9(C)'' should read ''(-9° C)''.

[FR Doc. Z7–14937 Filed 8–30–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 31, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 416

Medicare and Medicaid Programs; Ambulatory Surgical Centers, Conditions for Coverage; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 416

[CMS–3887–P]

RIN 0938–AL80

Medicare and Medicaid Programs; Ambulatory Surgical Centers, Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise some of the existing conditions for coverage (CfCs) that ambulatory surgical centers must meet to participate in the Medicare and Medicaid programs. The proposed modifications are intended to update the existing CfCs to reflect current practice and set forth new requirements to promote and protect patient health and safety.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 30, 2007.

ADDRESSES: In commenting, please refer to file code CMS–3887–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–3887–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–3887–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Morgan, (410) 786–4282.
Joan A. Brooks, (410) 786–5526.
Steve Miller, (410) 786–6656.
Rachael Weinstein, (410) 786–6775.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3887–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

As the single largest payer for health care services in the United States, the Federal Government assumes a critical responsibility for the quality of care furnished under its programs. Historically, the Medicare program's quality assurance approach was focused on identifying health care entities that furnish poor quality care or that fail to meet minimum Federal standards. Overall, we have found that this problem-focused approach has had inherent limitations and does not necessarily translate into better care for patients. Ensuring quality through the enforcement of prescriptive health and safety standards alone has resulted in expending many of our resources on working with marginal providers, rather than stimulating broad-based improvements in quality of care.

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) specifies that an ASC must meet health, safety, and other requirements specified by the Secretary of Health and Human Services (HHS) (the Secretary) in regulation if it has an agreement in effect with the Secretary. Under the agreement, the ASC agrees to accept the standard overhead amount determined under section 1833(i)(2)(A) of the Act as full payment for services, and to accept an assignment described in section 1842(b)(3)(B)(ii) of the Act for payment for all services furnished by the ASC to enrolled individuals. The Secretary is responsible for ensuring that the CfCs and their enforcement are adequate to protect the health and safety of individuals treated by ASCs.

To implement the CfCs, we determine compliance through State survey agencies that conduct onsite inspections utilizing these requirements. ASCs may be deemed to meet Medicare standards if they are certified by one of the national accrediting organizations whose standards meet or exceed the

CfCs. Currently, there are four Medicare approved national accreditation organizations: The Joint Commission; American Association for Accreditation of Ambulatory Surgical Facilities (AAAASF); Accreditation Association for Ambulatory Health Care (AAAHC); and the American Osteopathic Association (AOA).

The current ASC CfCs were originally published on August 5, 1982 (47 FR 34082), and, for the most part, these regulations have remained unchanged since that time. From 1990 to 2000, the number of ASCs participating in the Medicare program has increased at a rate of about 175 facilities a year. The total number of ASCs more than doubled from 1,197 to 2,966 during this ten year period, making ASCs one of the fastest growing facility types in the Medicare program. The annual volume of procedures performed on both Medicare and non-Medicare patients have also tripled. Currently, over 4,600 ASCs participate in the Medicare program.[1] This growth is due in part to advances in medical technology that have produced additional surgical procedures that can be safely performed outside of a hospital setting and increased focus on patient health and safety and patient convenience. This shift has paved the way for increasing numbers of procedures to be performed in an ASC. We believe that the changes we are proposing will strengthen and modernize the CfCs to be more aligned with today's ASC health care industry standards.

In addition, the recent transparency initiative directed by President Bush requires that more data be made available to all Americans as part of the Administration's commitment to make health care more affordable and accessible. In support of this initiative, we announced in August 2006 the release of Medicare payment information for 61 procedures performed in ASCs. The new information is available on our Web site at *http://www.cms.hhs.gov/HealthCareConInit/* and will help patients undergoing surgical procedures select the most appropriate setting for the delivery of high quality, efficient care. The information will show ''Commonly Performed Procedures in ASCs,'' and will contain charge and Medicare payment data for ASC facility costs for a limited number of services administered in States and counties. The data is broken down at the county, State and national level. Moreover, the CMS Web site at *http://www.cms.hhs.gov/center/ombudsman.asp* is available to the public and ASC patients to get information about the Medicare and Medicaid programs, prescription drug coverage, and how to coordinate Medicare benefits with other health insurance programs. The Web site also includes information about filing a grievance or complaint.

Section 109 of Division B, Title I of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) (TRHCA), Quality reporting for hospital outpatient services and ambulatory surgical center services, requires that the Secretary develop measures that are appropriate to determine the measurement of quality care (including medication errors) furnished by ASCs that reflect the consensus among affected parties. These measures, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities. The Secretary is authorized to reduce the annual payment update for failure to report on the chosen quality measures. We expect Medicare beneficiaries to receive high quality surgical services and for that reason, we are proposing to include a Quality Assurance Performance Improvement Requirement (QAPI) as a new condition for coverage (§ 416.43). (See section II.B.2 of the preamble of this proposed rule for a more detailed discussion of the quality assurance improvement requirement.)

We are soliciting public comments on quality measures appropriate to ASCs. We are interested in public comments regarding the extent to which ASCs are currently utilizing quality measures, the data source for those measures (for example, claims data and chart abstraction), and the extent to which those data are maintained electronically. We are also interested in how the measures were developed and why they are appropriate to measure the care provided to Medicare patients in ASCS.

We have developed a patients' right condition that emphasizes an ASC's responsibility to respect and promote the rights of each ASC patient.

II. Provisions of the Proposed Regulation

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS'' at the beginning of your comments.]

Eliciting quality health care for Federal beneficiaries from CMS-certified providers and suppliers requires taking advantage of continuing advances in the health care delivery field. As a result, we are revising the Medicare ASC requirements to focus on a patient-centered, outcome-oriented process that promotes patient care foremost, rather than a prescriptive, inflexible approach that penalizes providers of substandard care.

The conditions for coverage (CfCs) for ambulatory surgical centers (ASCs) were originally issued in 1982. Most of the revisions made since then have been payment related. Since 1982, significant innovations in ASC patient care delivery and quality assessment practices have emerged. In an effort to ensure continued quality in the ASC setting, we are proposing to revise three of the existing conditions and create three new conditions. The proposed revised conditions are: Governing body and management; Evaluation of quality (renamed Quality Assessment and Performance Improvement (QAPI); and Laboratory and radiologic services. The proposed new conditions are: Patient rights; Infection control; and Patient admission, assessment and discharge. Our objective is to achieve a balanced regulatory approach by ensuring that an ASC furnishes health care that meets essential health and quality standards, while ensuring that it monitors and improves its own performance.

To achieve this objective, we are working to revise not only the ASC requirements but the requirements for other major health care provider types, such as hospitals, home health agencies and end-stage renal disease facilities, through separate rules. All of the revised and new requirements are directed towards improving patient outcomes of care and satisfaction.

A. Definitions (§ 416.2)

Existing § 416.2 sets forth definitions for terms used in the ASC CfCs. We are proposing to revise the definition of ''Ambulatory surgical center (ASC).'' Also, we are proposing to add the definition for ''overnight stay.''

The ASC definition would read as follows:

Ambulatory surgical center or ASC would mean any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring an overnight stay following the surgical services, has an agreement with CMS to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part.

The overnight stay definition would read as follows:

Overnight stay, for purposes of the ASC CfCs, would mean the patient's

[1] Only comprehensive rehabilitation facilities and rural health clinics have experienced a higher rate of growth. Office of Evaluations and Inspections (OEI) analysis of Part B Medicare data. See Office of Inspector General Quality Oversight of Ambulatory Surgical Centers Supplemental Report 1: The Role of Certification and Accreditation.

recovery requires active monitoring by qualified medical personnel, regardless of whether it is provided in the ASC, beyond 11:59 p.m. of the day on which the surgical procedure was performed.

To provide further clarification on the overnight stay definition, we are proposing to use the 11:59 p.m. threshold as the standard for determining a patient's status when receiving services in an ASC facility. In the Medicare cost reporting manual (Provider Reimbursement Manual, Part 1, Section 2205 (Medicare Patient Days, page 22–16)), we have defined a hospital inpatient day as beginning at midnight and ending 24 hours later. Consistent with this longstanding policy, we would codify in regulations that any patient whose recovery requires active monitoring by qualified personnel beyond 11:59 p.m. of the day on which the surgical procedure was performed, is a patient who may require hospitalization or more intensive care. Accordingly, ASCs that are Medicare-certified may not keep patients beyond 11:59 p.m. of the day on which the surgical procedure was performed.

The Medicare Hospital Outpatient Prospective Payment System and CY 2007 Payment Rates proposed and final rules (71 FR 49506 and 71 FR 67960) address the denial of payment of an ASC facility fee for any procedure for which prevailing medical practice dictates that the beneficiary will typically be expected to require active medical monitoring and care at midnight following the procedure. We also note that the patient's location at midnight is a generally accepted standard for determining his or her status as a hospital inpatient or skilled nursing facility patient and as such, it is reasonable to apply the same standard in the ASC setting.

B. Specific Conditions for Coverage

We are proposing to retain many current requirements because they still reflect current practice and are predictive of ensuring desired outcomes and preventing harmful outcomes.

The changes we are proposing to the current CfCs are the result of three main considerations.

First, we considered the suggestions put forth in a February 2002 report by the HHS Office of Inspector General (OIG) entitled, *Quality Oversight of Ambulatory Surgical Centers; A System in Neglect [Janet Rehnquist, Inspector General, OEI–01–00–00450].* The report provided two recommendations specifically related to ASC patient health and safety. It recommended updating the CfCs to include patient rights and quality improvement. It also recommended that the CfCs be written in a manner that takes into consideration the scope and severity of the different types of surgical procedures, thereby establishing varied sets of requirements to which ASCs would be accountable.

In response to the suggestions in the OIG report, we are proposing to replace the current Evaluation of Quality requirement with a new QAPI requirement and are proposing to add a new Patient Rights requirement. However, from both a policy perspective and an operational perspective, we are unable to propose different sets of ASC CfCs that are based on the scope of severity of the procedures offered by an ASC. Since ASCs are free to host a wide range of surgical procedures, enforcement of a variety of sets of requirements based on the type of procedures provided would be difficult to implement, since this would demand changes in the type and frequency of State agency oversight. In addition, ASCs wishing to upgrade their certification (if the regulations were approached as a tiered system) would require recertification and add additional oversight burden to the State agencies. This would continue to impact available resources. However, we would expect each ASC's QAPI program to reflect the scope and severity of the surgical services they perform.

Second, we received feedback from the various ASC stakeholders that attended a 1996 Town Hall meeting sponsored by CMS. Recommendations were overwhelmingly directed toward payment issues, updating CPT codes, coverage of specific procedures, and reclassification of the procedure codes. However, a number of the commenters did favor incorporating a QAPI program in place of the existing requirement at § 416.43 (Evaluation of quality) since most ASCs had already implemented a quality assurance performance improvement program as the standard of practice.

Third, this proposed rule is part of a larger CMS effort to bring about improvements in the quality of care furnished to Medicare and Medicaid beneficiaries through an outcome-oriented approach. The existing ASC CfCs do not, in any practical manner, address patient rights or a way to incorporate a quality assessment program that will assist ASCs in managing patient care more effectively. Accordingly, in light of such concerns, we would revise the CfCs to include a QAPI program and patient rights requirement.

1. Condition for Coverage—Governing Body and Management (§ 416.41)

The current regulation contains a condition for Governing Body and Management. We are proposing new language in the condition statement which would require the governing body to assume direct oversight and accountability for the QAPI program. The governing body would be responsible for ensuring that QAPI efforts, at a minimum, focus on identifying areas needing improvement and that QAPI is implemented in accordance with § 416.43 of this part. Specific governing body QAPI responsibilities are detailed in the proposed QAPI requirement at § 416.43. By focusing on QAPI, ASC management would be expected to be better able to improve care being furnished to patients. We are also proposing that the governing body be responsible for creating and maintaining a disaster preparedness plan. In addition, we are proposing to retain the current requirement which provides that the ASC can contract for services with an outside resource. However, we propose to incorporate this language into a separate standard, located at § 416.41(a). The ASC's governing body would still be responsible for the services that are furnished.

The standard on hospitalization will remain the same but has been separated into two subparts for purposes of State agency survey findings. This would enable State surveyors to cite an ASC's compliance with these requirements more precisely. All ASCs will still be required to transfer patients requiring emergency medical care beyond the capabilities of the ASC to the nearest local, Medicare-participating hospital or a local, non-participating hospital that meets the requirements for payment for emergency services under § 482.2 of this chapter. Moreover, the definition of local hospital would require the ASC to consider the most appropriate facility to which the ASC would transport its patients in the event of an emergency. If the closest hospital could not accommodate the patient population or the predominant medical emergencies associated with the types of surgeries performed by the ASC, a more distant hospital might also meet the local definition. Regardless of any business issues that arise between ASCs and their local hospital, the ASC would be required to transfer patients to the nearest, most appropriate local hospital, since this would affect patient health. Any transfers that do not meet the requirements of proposed § 416.41(b)(1) and (2) would be determined to be out

of compliance with Medicare regulations.

Lastly, we are also proposing the addition of a disaster preparedness standard at § 416.41(c). In response to the problems affecting health care facilities across much of the Gulf Coast region in September 2005 as a result of Hurricane Katrina, we are proposing this requirement to ensure the health and safety of patients and staff members alike. The ASC's governing Body, as part of the ASC leadership component, would be responsible for maintaining a written disaster preparedness plan that would provide for the emergency care of patients in the event of fire, natural disaster, functional failure of equipment, or other unexpected events or circumstances that threaten the health and/or safety of its patients and staff members. We recommend ASCs coordinate the plan with their State and local agencies, as appropriate. In an effort to achieve successful outcomes in a real-life disaster emergency, we are proposing at § 416.41(c)(3), that ASCs conduct annual drills for effectiveness. The ASC would then also be required to complete a written evaluation of every disaster drill and immediately implement any corrections to the plan.

2. Condition for Coverage—Quality Assessment and Performance Improvement (§ 416.43)

The existing ''Evaluation of quality'' requirement found at § 416.43, relies on a problem-oriented, reactive approach and primarily focuses on ASC self-assessment and evaluation of the procedures already performed and appropriateness of care issues. However, during the last decade, the health care industry has moved beyond the problem-oriented approach of monitoring quality assurance to an approach that addresses quality improvement prospectively through focused projects designed to reduce errors and address omissions of care *before* patients are adversely affected. We have already introduced the QAPI philosophy to the hospital, hospice and end stage renal disease facility programs either through a final regulation or a proposed rule. To raise the performance expectations for ASCs seeking entrance into the Medicare program, as well as the expectations of those ASCs already participating in Medicare, we are proposing that each ASC also develop, implement, and maintain an effective QAPI program. Our aim is to support the development of patient-centered, outcome-oriented efforts that focus on patient health and safety. An ASC QAPI program would be designed to stimulate the ASC to constantly monitor and improve its own performance, and to be responsive to the needs, desires, and satisfaction levels of the patients it serves. With an effective QAPI program in place, the ASC would be better able to identify and reinforce the activities it is doing well, identify activities that are leading to poor patient outcomes, and take actions to improve performance. The ASC would be expected to take whatever actions are necessary to implement improvements in its performance as identified through its QAPI program. We are also proposing to change the CfC title from ''Evaluation of quality'' to ''Quality assessment and performance improvement.''

In proposed § 416.43(a), Program scope, we are proposing that the ASC's QAPI program must include, but not be limited to, an ongoing program that demonstrates measurable improvement in patient health outcomes, and improves patient safety by using quality indicators or performance measures associated with improved health outcomes and with the identification of medical errors. Although ASCs may certainly develop their own QAPI program, we encourage them to be open to considering QAPI programs in use by other health care entities since QAPI programs in general contain the same basic elements.

Monitoring care in an ASC can be challenging since the typical patient may be seen for only one visit. Therefore, it is critically important that an ASC's QAPI program identify high-risk areas and areas of problematic care and conduct follow-up analysis in a timely manner to identify specific areas in need of improvement. The ASC would be expected to measure, analyze and track quality indicators, including adverse patient events, infection control and other aspects of performance that include processes of care and services furnished in the ASC. Once a problem is identified, we would expect the ASC to establish and implement a plan to correct all deficiencies. We would expect the ASC to track its improvement and compliance over time to determine, in part, if its corrective actions were effective. Because staff members are in a unique position to provide the ASC with structured feedback on its performance and suggestions on how performance can be improved, we would expect the ASC to utilize staff in conducting its QAPI program. An ASC that decided to utilize an outside resource to conduct its QAPI program would still need to have its staff involved in the process.

In proposed § 416.43(b), Program data, we would require the ASC to utilize quality indicator data to monitor the effectiveness and safety of services, and identify opportunities for improving the ASC's services. Where an ASC professional organization has made QAPI-related programs available to ASCs, we believe an ASC should consider exploring the feasibility of using such applicable programs to meet its needs. We would encourage ASCs to use a wide variety of information and data, in addition to their own findings, to guide improvement efforts. This information could include material available from national accrediting and other ASC organizations such as the AAAASF, the AAAHC, The Joint Commission, and the AOA. Many organizations offer a variety of quality improvement-related services such as benchmarking, quality indicators and quality assurance instructions. For example, the AAAHC offers information on the AAAHC Institute for Quality Improvement at its Web site, *http://www.aaahc.org.* Information made available by these organizations and others could provide an opportunity for an ASC to learn about and be more involved in clinical quality performance measurement.

We are not proposing that an ASC utilize specific quality indicators or collect specific data. An ASC could utilize existing resources or incorporate information from an existing QAPI program developed by other organizations, to potentially elicit a greater degree of insight into how to improve the quality of its services and patient satisfaction rather than developing a totally new program. An ASC would be free to develop programs that meet its individual needs and, in some cases, might benefit from an internally developed process. Regardless of what type of quality improvement program is chosen, we would require that the governing body approve the program. Since ASCs are currently required to ''conduct an ongoing, comprehensive self-assessment of the quality of care provided * * *'' under the current evaluation of quality measurement requirement at § 416.43, we do not believe ASCs will experience a protracted or difficult transition period.

At proposed § 416.43(c)(1), Program activities, we propose to require that the ASC set priorities for its performance improvement activities that: (1) Focus on high risk, high volume and problem-prone areas; (2) consider the incidence, prevalence and severity of identified problems; and (3) give priority to improvement activities that affect health outcomes, patient safety and quality of care. We expect an ASC would take immediate action to resolve any

identified problems that directly or potentially threaten the care and safety of patients. For example, patients with minimal support at home, surgery on patients with concurrent health issues, and those whose diagnosis and care may be unique to the ASC, could be the subject of more intense QAPI activity. Prioritizing areas of improvement would be essential for the ASC to gain a strategic view of its operating environment and to ensure a consistent quality of care provided over time.

At § 416.43(c)(2), we are proposing that the ASC track adverse patient events, examine their causes, implement improvements aimed at preventing a reoccurrence of the adverse events and ensure that those improvements are sustained over time. We have not proposed specific methods that ASCs would be required to use in implementing these actions. ASCs would be free to choose methods that are compatible with their operations. ASCs would be expected to view their staff as partners in the quality improvement process. As a follow-up requirement to tracking adverse patient events, we are proposing at § 416.43(c)(3) that ASCs would implement preventive strategies throughout the facility targeting any adverse patient events and ensuring all staff members are familiar with these strategies for improvement.

At § 416.43(d), Performance improvement projects, we are proposing the number and scope of improvement projects conducted annually must reflect the scope and complexity of the ASC's services and operations. For example, we would expect that where endoscopy services constitute the majority of an ASC's services, performance projects related to endoscopic procedures, issues, and follow-up care would be implemented. The ASC would be expected to fully document the projects that are being conducted, and documentation, at the very least, would be expected to include the reason(s) for implementing the project, and a description of the results of the project. Through meaningful data collection and analysis of adverse patient events and outcomes, an ASC would be able to determine how best to select projects that coincide with its existing nature and operations.

We are proposing at § 416.43(e), Governing body responsibilities, that the ASC's governing body would be responsible and accountable for ensuring that:

- The ongoing QAPI program is defined, implemented and maintained;
- The program addresses priorities and that all improvements are evaluated for effectiveness;
- The QAPI data collection methods, frequency and details are appropriate;
- Safety expectations are established; and
- Adequate resources are allocated for implementing the facility's QAPI program.

Any long-term program would require acceptance and direction from an organization's leadership in order to be successfully implemented, thus the ASC governing body's role would be critical to QAPI success. Once an improvement plan is developed and implemented, the ASC must track its progress to determine its effectiveness. The ASC governing body is responsible for assuring that the plan is carried out and that documentation can support the effort. If documentation is not available, selected requirements would be marked deficient at the time of a State survey. We would expect the governing body to be involved in the QAPI process. With an effective QAPI program in place and operating properly, the ASC could better identify and reinforce the activities it is doing well, identify activities that lead to poor patient outcomes, and take actions to improve performance.

3. Condition for Coverage—Laboratory and Radiologic Services (§ 416.49)

The current CfC Laboratory and radiologic services, located at § 416.49, would require laboratory and radiological services to be provided by certified facilities, regardless of whether the ASC performs the services or if the services are referred out to another facility.

In § 416.49, we would divide the current condition into two separate standards: Laboratory and radiologic services; in addition, we are proposing the expansion of the radiologic services requirement. The laboratory standard requirements would not change.

The proposed changes to the radiologic services standard would parallel the current laboratory standard by including requirements that the ASC would be required to meet, if applicable, when providing services directly or under arrangement.

The requirement at § 416.49(b)(1) is part of the current laboratory and radiologic services condition and the language would remain unchanged. The proposed language at § 416.49(b)(2) would require the ASC to meet the requirements of the CfCs for portable x-ray suppliers found at § 486.100 through § 486.110 of this chapter if it is furnishing these services directly. We have also proposed that radiologic services furnished under arrangement would be performed by an entity that was certified by Medicare as a supplier of portable x-ray services by meeting the Medicare CfCs for portable x-ray services. This change would better ensure that high quality radiologic services are available to ASC patients.

4. Condition for Coverage—Patient Rights (§ 416.50)

This proposed new requirement would require ASCs to notify patients of their rights, provide for the exercise of rights, establish the right of privacy and safety, and maintain the confidentiality of clinical records. Although the number of surgical procedures performed in ASCs continues to grow (for example, from 1990 to 2000,[2] the annual volume of procedures performed by ASCs increased from 1.3 to 4.3 million), the current ASC regulation does not address patient rights.

In February 2002, the HHS Office of the Inspector General (OIG) issued a report, ''Quality Oversight of Ambulatory Surgical Centers; A System in Neglect'' [Janet Rehnquist, Inspector General, OEI–01–00–00450] which was based on a 2001 assessment of CMS's quality oversight of ASCs. The OIG recommended that CMS include a patient rights provision in the CfC for ASCs. The report specified that a ''patients' rights CfC'' is necessary to address issues such as how ASCs will respect patient dignity and resolve patient grievances. In developing the patient rights requirement we examined the current requirements for end stage renal disease facilities and hospitals.

The addition of a patient rights provision would be consistent with the philosophy of assuring patient participation in his or her care. A similar provision has been included in other recently issued rules (for example, Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers to Perform Organ Transplants (72 FR 15198, March 30, 2007)).

The proposed standard at § 416.50(a), Notice of rights, would require the ASC to provide the patient or representative with verbal and written notice of the patient's rights in a language and manner the patient understands prior to furnishing care to the patient. The ASC would also be responsible for posting written notice of the patient rights in a place or places within the ASC where they are likely to be noticed by patients

[2] Department of Health and Human Services Office of Inspector General Quality Oversight of Ambulatory Surgical Centers, The Role of Certification and Accreditation, Supplemental Report 1, February 2002, OEI–01–00–00451.

waiting for treatment. In addition, the notice of patient's rights must include the name, address and telephone number for a representative in the State agency to whom patients can report complaints about ASCs, and the CMS Web site for the Medicare Beneficiary Ombudsman (*http://www.cms.hhs.gov/center/ombudsman.asp*.). (Section 923 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173) (MMA), mandated the creation of the Medicare Beneficiary Ombudsman at section 1808(c) of the Act, to ensure that Medicare beneficiaries receive the information and help they need to understand their Medicare options and to apply their rights and protections. A Medicare Beneficiary Ombudsman Open Door Forum (ODF) has been established to provide an opportunity for beneficiaries, their caregivers and advocates to publicly interact with the Medicare Beneficiary Ombudsman to discuss issues and concerns regarding ways to improve the systems and processes within the Medicare program.

The ASC would also be responsible for meaningfully disclosing, if applicable, physician financial interests or ownership in the ASC facility in accordance with 42 CFR part 420 (Program Integrity). The ASC must disclose the information in writing and furnish it to the patient prior to the first visit.

The disclosure of financial information should be such that patients and their representatives are able to clearly understand if the physician(s) who will be performing a procedure has a financial relationship with the ASC. It is incumbent on the ASC to be able to provide information that is not only technically correct, but which is also easily understood by persons not familiar with financial statements, legal documents or technical language. The ASC should be aware of the age and the cognitive abilities of its patients and recognize that older patients may be confused when presented with a document that they cannot readily understand at first glance.

In § 416.50(a)(2), Advance directives, the ASC would also be responsible for providing the patient or representative with verbal and written information concerning its policies on advance directives, including a description of applicable State law and, if requested, official State advance directive forms. In addition, the ASC would be required to inform the patient or representative of the patient's right to make informed decisions regarding their care, and to document in a prominent part of the patient's current medical record, whether or not the individual has executed an advance directive.

We believe that ASCs should be given flexibility to meet this requirement within the context of their unique patient populations. Differences exist among ASCs and, therefore, ASCs should be allowed to determine the process they would use to comply with this proposed requirement. As a result, we are not establishing specific guidelines for implementation. We also believe that the ASC should be aware that questions may arise when informing patients of their rights; and therefore, they should provide ample time for answering questions.

If the patient is unable to effectively communicate in English, the ASC could have the family members assist in providing an explanation of rights. If a family member is not available, an ASC could make arrangements to furnish translation services to ensure that patients understand their rights. We would expect that advance patient scheduling would enable the ASC to secure the translation services that might be necessary. If the ASC is not able to furnish translation services and believes that neither the patient nor his or her representative will understand the explanation of rights, the ASC would be required to reschedule the procedure or request assistance from the parties in securing translation services. ASCs would have flexibility in determining how best to inform patients of their rights. We would also require that a written explanation of patient rights would be made available to the patient in a language the patient could understand.

Most Medicare facilities, including hospitals, critical access hospitals, skilled nursing facilities, nursing facilities, home health agencies, and hospices are required to maintain written policies and procedures that meet the requirements for advance directives for all adult individuals receiving medical care. In § 489.100, an advance directive is defined as a written instruction, such as a living will or durable power of attorney for health care, that is recognized under State law, whether statutorily or by the courts of the State, and relates to the provision of health care when the individual is incapacitated.

The current ASC regulation does not contain an advance directive provision. This is because Medicare suppliers of services, of which an ASC is one type, are not currently required to maintain written policies and procedures concerning advance directives. However, because ASCs are performing an increasing number of surgical procedures on Medicare beneficiaries, many of which are invasive and require general anesthesia, we are proposing that advance directives be made available in an ASC.

We are also proposing a requirement entitled ''Submission and investigation of grievances'' at § 416.50(a)(3). This requirement would respond directly to the OIG report referenced earlier regarding management of patient grievances and any alleged violations against patients.

Grievance procedures are already in effect for numerous health care providers including ASCs. Similar to other internal procedures (for example, admission and discharge procedures, infection control procedures and others that are common to health care entities) the development and implementation of grievance procedures vary. Therefore, we have determined that it would be better to allow ASC to establish the specifics of a grievance system that may match its current one or needs rather than requiring that every ASC conform to a single grievance system.

We are proposing that the ASC would establish clearly explained procedures for documenting the existence, submission, investigation, and disposition of grievances presented to the ASC (either written or verbal) made by the patient or the patient's representative. ASCs would document all alleged violations related to and including, but not limited to, mistreatment, neglect, verbal, mental, sexual or physical abuse. If other allegations of mistreatment arise, such as theft of personal property, the ASC would document this allegation, as well. The ASC would immediately report these allegations to a person in authority in the ASC, the State, and local bodies having jurisdiction, and the State survey agency if warranted, to the extent that such reports are consistent with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA) and privacy provisions.

We are proposing that the grievance process specify time frames for review and response to the grievance. We are also proposing the ASC would be required to investigate, document, and respond to all grievances made by a patient or the patient's representative regarding treatment or care that is (or fails to be) furnished.

We are proposing that certain information be captured when documenting and responding to grievances. Proposed documentation should include such information as how the grievance was addressed, the steps taken during the investigation; written

notice to the patient or representative of the ASC's decision (containing the name of an ASC contact person); the results of the grievance process; and the date the grievance process was completed consistent with HIPAA and privacy requirements. ASCs could use different approaches to effectively meet this CfC. We would set forth the general elements that should be common to grievance processes across all ASCs, but we are not explicitly delineating strategies and policies that ASCs are required to use to comply with the requirement. Also, we would leave the degree of documentation to the discretion of the ASC.

The OIG Report specifies the growing need for a grievance process which would ensure that ASCs provide quality care. It also specifies that the process should provide Medicare consumers with a forum to have their grievances about ASCs documented and investigated by State agencies and accreditors. The process should also identify poor or even dangerous ASCs for intervention and follow-up. Consistent with the recommendations in the OIG's report, we are proposing a new standard, ''Exercise of rights and respect for property and person,'' at § 416.50(b) which would specify that every patient would have the right to: (1) Exercise his or her rights without being subjected to discrimination or reprisal; (2) voice grievances regarding treatment or care that is (or fails to be) furnished; and (3) be fully informed about a treatment or procedure and the expected outcome before it is performed.

In addition, if the patient is determined to be incompetent under State law by a court of proper jurisdiction, the person appointed under State law could act on the patient's behalf. If a State court has not adjudged the patient incompetent, any legal representative designated by the patient in accordance with State law could exercise the patient's rights on his or her behalf to the extent allowed by State law. The ASC would retain flexibility in developing the policies that would support these rights. Although, we are not proposing a specific method stating how the ASC would implement § 416.50(b), we expect that an ASC would educate its staff on the importance of patients' full exercise of their rights and record and maintain complete and full documentation with respect to allegations concerning violation of these rights.

We would propose at § 416.50(c), Privacy and safety, that patients have the right to personal privacy and safety, to receive care in a safe setting, and to be free from all forms of abuse or harassment. For example, ASCs would be required to provide a private space in which patients could disrobe and wait until the surgical procedure begins because we believe it is inappropriate for patients to be required to sit in a public waiting area while in a hospital gown with other fully clothed or similarly gowned patients or be in a common patient area without the benefit of partitions. This right would also allow patients, for example, to identify and report dangerous or unsafe conditions, harassment or abusive behaviors within the ASC that the patient believes could negatively impact the services received at the ASC. We believe this requirement would act as an additional safeguard to patient health and safety.

The proposed ''Confidentiality of clinical records standard'' at § 416.50(d) is designed to safeguard patients against unauthorized use of their clinical record. We would assure that the patient's right to confidentiality consistent with HIPAA standards and that access to or release of patient information and clinical records is permitted only with written consent of the patient or representative or as authorized by law. We are proposing to add this requirement because patients have the right to communicate with health care providers in confidence and to have the confidentiality of their health care information protected. In addition, all ASCs would be required to comply with the HIPAA health information privacy rule at 45 CFR parts 160 and 164.

5. Condition for Coverage—Infection Control (§ 416.51)

There is currently a requirement for Infection control. The current requirements on infection control are incorporated within the Physical environment standard of the Environment Condition for coverage (§ 416.44). Current requirements include the establishment of a program for identifying and preventing infections, maintaining a sanitary environment, and reporting the results to appropriate authorities.

We propose to establish a separate condition for infection control since control of infection is critically important to overall patient and staff health and safety.

We believe that surgery in an ASC must not entail a greater risk of infection to the patient than surgery in an inpatient setting. Medicare approved surgical procedures are performed in a variety of settings and we believe that an effective infection control program should be present in all ASCs. One primary cause of infections is poor surgical technique and follow-up care. The Centers for Disease Control and Prevention (CDC) 1999 Guideline for Prevention of Surgical Site Infection [Infection Control and Hospital Epidemiology, Vol. 20 No. 4], also states that serious surgical infections can be explained by the emergence of antimicrobial-resistant pathogens and the increased numbers of surgical patients who are elderly. Furthermore, the CDC also reports that two million people are affected by infections that annually occur in hospitals and not including those healthcare associated infections that occur in long-term care facilities, ambulatory-care facilities and outpatient settings (CDC. Public health focus: surveillance, prevention and control of nosocomial infections (MMWR 1992; 41: 783–7)). A recent report on maximizing hand hygiene compliance and improved outcomes published in Infection Control Today reported that healthcare associated infections subject patients to increased risk of morbidity and mortality, increased durations of care and increased healthcare treatment costs (E. Fendler and P. Groziak; Maximizing Hand-Hygiene Compliance to Improve Outcomes: A New Tool for Infection Control, Infection Control Today, November 2001). Furthermore the report by Fendler and Groziak, according to CDC estimates, states that implementing effective infection control programs prevents one-third of these infections.

The proposed infection control condition would place accountability on ASCs to prevent, control, and investigate infections and communicable diseases, and take action that result in improvements for those problematic areas identified and monitored as part of the proposed QAPI program. However, the proposed infection control condition allows flexibility for ASCs to determine how to meet these objectives. This includes the flexibility to determine how much training in infection control is necessary for the ASCs personnel.

The first standard, sanitary environment, would require the ASC to provide a sanitary environment by following acceptable infection control standards of practice in the ASC setting to avoid sources and transmission of infections and communicable diseases. We have proposed to expand the current requirement of maintaining a sanitary environment to include the utilization of infection control standards of practice as guidelines in the ASC infection control program.

The proposed infection control program standard would require the ASC to designate a qualified professional, such as a registered nurse, as the infection control officer. The infection control program would operate under the direction of that designated individual who would be accountable for the investigation and resolution of infection and communicable disease incidents. In addition, the infection control program would be required to follow an organized plan of action to identify infection control problems and implement corrective measures and preventive mechanisms when necessary. We considered requiring ASCs to meet CDC and Occupational Safety and Health Administration (OSHA) standards for providing an environment to avoid infections and communicable disease. However, such a requirement would raise questions as to which CDC or OSHA standards must be met. Moreover, where dual sets of professionally recognized standards exist, we would not wish to restrict ASC flexibility by mandating compliance with a particular body of standards. Therefore, we are not mandating that ASCs follow any specific set of infection control guidelines.

However, we would strongly encourage the ASCs adhere to infection control guidelines that are published by the CDC, the Association of Practitioners in Infection Control (APIC) and the JCAHO as a reference for the utilization of infection control standards of practice.

As stated in the infection control standard, infection control must be an integral part of the QAPI program. In addition, infection control would also be targeted as a required area to be monitored in the proposed QAPI condition. The designated ASC personnel responsible for the infection control program would be required to coordinate with the QAPI program to maintain and improve outcomes in ASC infection control.

We would expect that the ASC will integrate knowledge gained from past and current experiences to modify policies, procedures or practice that would lead to improvements for those problematic areas identified and monitored as part of the QAPI program.

We also considered including specific requirements concerning preoperative hand/forearm antisepsis between surgical patient contacts. The CDC reports that failure to perform appropriate hand hygiene is considered the leading cause of healthcare associated infections and spread of multi-resistant organisms and has been recognized as a substantial contributor to outbreaks. (Centers for Disease Control and Prevention, *Guideline For Hand Hygiene in Health-Care Settings,* October 25, 2002; Vol. 51; No. RR–16). However, we believe the ASC's obligation to protect patients and staff from facility acquired infections could be assured if an ASC is required to follow current infection control standards of practice. ASCs would be held accountable for establishing hand hygiene policies. Adequate policy and practice of hand hygiene between all patients that addresses antiseptic agents used, scrubbing technique, duration of the scrub, condition of the hands, and techniques used for drying and gloving would all fall under the responsibilities of the ASC to protect its staff and patients from infection.

In addition, we are not proposing to include a prescriptive requirement that mandates a specific method of cleaning and sterilization of equipment utilized in ASC procedures. We would require each ASC to be responsible for creating and implementing its own policies and procedures for proper instrument cleaning and maintenance of the sterilization equipment to prevent patient exposure to infectious organisms by ensuring all equipment is properly cleaned and sterilized. If an ASC utilizes equipment that has been improperly sterilized, a potential exists to put all of its patients at risk.

With the increasing popularity of ASCs, adherence to the most basic elements of infection control, like simple hand hygiene techniques, are of paramount importance.

6. Condition for Coverage—Patient Admission, Assessment and Discharge (§ 416.52)

This proposed condition continues to reflect a more patient-centered approach and underscores our view of essential steps to improve quality of care and patient outcomes. The proposed new condition would augment the current regulations that require an evaluation of the patient for anesthesia risk before surgery and proper recovery from anesthesia before discharge.

As noted by the former CMS Administrator, Dr. Mark McClellan, during his testimony before the Senate Finance Committee on May 18, 2006, ''Medicare payments to ASCs are expected to better reflect the resources required to perform specific surgical procedures and to be similar to payments under other payment systems. In its 2005 Report to Congress, CMS found that many orthopedic surgical specialty hospitals were more similar to ASCs than to acute care hospitals.'' To address this problem, CMS is developing revisions to the payment rates and also the list of procedures eligible for payment. The payment revisions are slated to be in effect by January 1, 2008, and it is anticipated there will be many more procedures performed in ASCs than in the past. We believe that with the expansion of procedures being performed in ASCs, there is a need for a requirement that addresses thorough patient assessment and recovery issues.

Older patients generally face greater risks when using anesthetics during surgical procedures than do younger patients. The normal aging process can extend healing time, increase the recovery time from medications, and complications may be more severe (Merck Manual of Geriatrics, Section 3, Chapter 27, Anesthesia Considerations). It is our intent to ensure that accurate and thorough assessments would be conducted to assure appropriate and safe surgery, and that patients would be able to tolerate a scheduled surgical procedure.

We are proposing this new condition as a method to capture specific patient care requirements in the pre-admission, pre-surgical, post-surgical and discharge phases of the ASC surgery process. The core objectives of this condition would be to ensure: (1) The patient can tolerate a surgical experience; (2) the patient's anesthesia risk and recovery are properly evaluated; (3) the patient's post-operative recovery is adequately evaluated; (4) the patient receives effective discharge planning; and (5) the patient is successfully discharged from the ASC.

Under the first proposed standard, ''Admission and pre-surgical assessment'', we would propose that each patient must have a comprehensive medical history and physical assessment completed not more than 30 days before the date of scheduled surgery by a physician (as defined in section 1861(r) of the Act), or other qualified practitioner in accordance with State law and ASC policy. We are proposing the 30-day time limit to remain consistent with our hospital conditions of participation that also requires a medical history and physical assessment be completed no more than 30 days before an elective procedure or admission. In addition, to ensure the ASC healthcare team would have all patient information available if needed, the ASC would be required to place the medical history and physical assessment in the patient's medical record before the surgical procedure is started.

The information to be included in the assessment would be determined by the

ASC based on accepted standards of practice and the characteristics, health risks and needs of the patient. ASCs would continue to have the flexibility to define the content and extent of the pre-surgical assessment; however, we would propose several items that must be included. The pre-surgical assessment entry in the medical record would be required to include an updated entry documenting an examination for any changes in the patient's condition since the most recently documented medical history and physical assessment. In addition, we believe that ASCs must provide specific documentation addressing the patient's capacity, both physically and mentally, to undergo the planned surgery and documentation of any allergies. As stated in the current pre-surgical assessment requirement at § 416.42(a), a physician is required to examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed. The proposed additional pre-assessment items are to be completed by a physician or other qualified practitioner in accordance with State law and in conjunction with the current pre-surgical requirements. We believe that this proposed standard would set a clear expectation for a direct, effective relationship between the patient medical history and assessment and the procedures performed; a relationship that is essential for achieving desired healthcare outcomes.

The proposed standard § 416.52(b), ''Post-surgical assessment'' would require the ASC to ensure that a thorough assessment of the patient's post-surgical condition is completed, documented in the medical record and that any post-surgical needs are addressed and included in the discharge notes. We propose to retain the current standard at § 416.42(a) that requires a physician to evaluate each patient for anesthesia recovery before discharge. The post-surgical assessment must be performed by a physician or other qualified practitioner in accordance with State law. The post-surgical assessment would assess all body systems and identify any unforeseen or unanticipated post-surgical medical issues. The goal would be to decrease the amount of post-surgical complications experienced after discharge in the home recovery setting.

The last proposed standard, Discharge, would require the ASC to provide each patient with written discharge instructions and ensure that all patients have the best possible transition to home and that all post-surgical needs would be met. In addition, we are proposing that each patient have a discharge order signed by the physician or the qualified practitioner who performed the surgery or procedure unless otherwise specified by State law. The discharge order must indicate that the patient has been evaluated for proper anesthesia and medical recovery. The requirement of a signed discharge order would ensure our beneficiaries are stable and safe to be discharged. We believe it is imperative, especially in preparation for the upcoming changes to the approved procedures in an ASC setting, that a physician or the qualified practitioner who performed the surgery or procedure be available to provide assistance in the ASC if needed, until all patients have been given a signed discharge order by the aforementioned practitioner. We believe this would eliminate any confusion with respect to the level of care and the ability of the ASC to respond to a patient emergency before the patient is discharged. We have not included language specifically requiring a physician to be on the premises while there are patients in the ASC. However, when the discharge order is signed, the patient would be expected to be discharged, that is, physically leave the ASC facility within a reasonable amount of time. Fifteen to thirty minutes would be a reasonable timeframe for the patient to complete the discharge process and leave the facility. Although most patients know how to contact their physician during nonroutine office hours, professional standards of practice dictate the ASC should include physician coverage information in the written discharge instructions regarding emergency care in the event of any postoperative adverse effects. We believe adding the three additional discharge elements would be essential for our beneficiaries because advanced age could pose slower healing times, unforeseen complications, and depending on the individual, difficulty with home self-care. The proposed discharge standard would not be intended to require lengthy and burdensome documentation. However, the intent is to ensure our beneficiaries receive the appropriate care once the surgical procedure is completed.

Lastly, early in the ASC regulation drafting process, we considered creating a revised list of required emergency equipment. However, we decided not to create a new list since the emergency equipment that is currently stated in § 416.44(c) is what we consider to be the minimum requirement. Advances and improvements in medical technology generate improvements in emergency equipment used by medical professionals. As a result, a variety of applicable equipment is available from which to choose. Technology and professional judgment should dictate the kind of emergency equipment a facility should be using. If another list of ''current'' emergency equipment were to be created it would soon be outdated. Conversely, not specifying any emergency equipment would lead to ambiguity and there is a need to ensure that a minimum amount of emergency equipment will be available on-site at the ASC.

We believe that substitutions for a specific piece of emergency equipment, listed in § 489.44(c), could be appropriate if it performs the same emergency function for which the equipment listed in the current regulation was intended. For example, in the event a patient experiences cardiac fibrillation, it is critical that ASCs provide their medical professionals with the appropriate equipment to respond to this kind of emergency. The use of automatic external defibrillators (AED) has recently increased in various settings and in healthcare facilities. The intent of the current and proposed regulation is to make certain that an ASC uses emergency equipment which is deemed appropriate. We believe that ASCs should be required to have available all forms of emergency equipment listed in § 416.44(c), or other equipment which can meet the intended purpose.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Conditions for Coverage—Governing Body and Management (§ 416.41)

In summary, this section outlines the conditions of coverage related to the governing bodies and management of ASCs. Ambulatory surgical centers must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation. Section 416.41(b)(3) states that as a condition of coverage, an ASC must have a written transfer agreement with the hospital as referenced in § 416.41(b)(1) and § 416.41(b)(2).

The burden associated with this requirement is the time and effort involved in the ASC having a written transfer agreement with the hospital receiving the transfer. While this requirement is subject to the Paperwork Reduction Act of 1995 (PRA), this requirement is currently approved in OMB No. 0938–0266, with a current expiration date of February 29, 2008.

Section 416.41(c)(1) requires that an ASC maintain a written disaster preparedness plan that provides for the emergency care of patients in the event of fire, natural disaster, functional failure of equipment, or other unexplained circumstances that threaten the health and safety of its patients. Section 416.41(c)(3) requires that an ASC complete a written evaluation of drills conducted to test the effectiveness of the disaster preparedness plan.

The burden associated with the requirements in § 416.41(c)(1) and § 416.41(c)(3) is the time and effort necessary to draft and maintain the written disaster preparedness plan. In addition, there is burden associated with drafting and maintaining the reports on the effectiveness of the plan. While these requirements are subject to the PRA, we believe the burden is exempt as stated in 5 CFR 1320.3(b)(2), because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Conditions for Coverage—Quality Assessment and Performance Improvement (§ 416.43)

In summary, this section details the conditions of coverage for quality assessment and performance improvement. Ambulatory surgical centers, through the governing body and with the active participation of the medical staff, must develop, implement and maintain an ongoing, data-driven quality assessment and performance improvement (QAPI) program. This section outlines the standards for the scope of the QAPI programs, the use of quality indicator data, the prioritization of performance improvement program activities, the complexity of performance improvement projects, and the responsibilities of ASC governing bodies. Specifically, § 416.43(d)(2) states that an ASC must fully document the performance improvement projects that are being conducted. The documentation at the very least must include the reason(s) for implementing the project, and a description of the results of the project.

The burden associated with this requirement is the time and effort involved in documenting the performance improvement projects. While this requirement is subject to the PRA, this requirement is currently approved in OMB No. 0938–0266, with a current expiration date of February 29, 2008.

Conditions for Coverage—Patient Rights (§ 416.50)

This section outlines the requirements an ASC must meet when informing a patient of his or her rights, in addition to the protection and promotion of these rights. Section 416.50(a)(1) requires that an ASC provide the patient or the patient's representative with verbal and written notice of the patient's rights prior to furnishing care to the patient and in a language and manner that the patient or patient's representative understands. Section 416.50(a)(1)(i) requires ASCs to post the written notice of patient rights in a place or places within the facility that is likely to be noticed by patients or their representatives.

The burden associated with these requirements is the time and effort required to inform the patient or the patient's representative of the patient's rights, and the time and effort associated with posting the written notice of patient rights. While these requirements impose burden, we believe it is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Section 416.50(a)(2)(i) requires ASCs to provide the patient or representative with verbal and written information concerning its policies on advance directives, including a description of applicable State law. Section 416.50(a)(2)(iii) requires documentation in a prominent part of the patient's medical record that indicates whether or not the patient has executed an advance directive. The burden associated with these requirements is the time and effort necessary for disseminating the information to the patient, both orally and in writing, and maintaining the necessary documentation in the medical record. While these requirements are subject to the PRA, we believe the associated burden is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Section 416.50(a)(3) imposes both recordkeeping and reporting requirements. Specifically, § 416.50(a)(3)(iii) states that an ASC must fully document all alleged violations relating, but not limited to, mistreatment, neglect, verbal, mental, sexual or physical abuse. In addition, an ASC must immediately report the allegations to a person in authority in the ASC, the State and local bodies having jurisdiction, and the State survey agency. In addition, § 416.50(a)(3)(iv) requires an ASC to document how the grievance was addressed. The ASC must also provide the patient with a written notice of its decision.

The burden associated with these requirements is the time and effort involved in documenting the alleged violations and reporting the alleged violations to the aforementioned entities. While this requirement is subject to the PRA, the burden is exempt as it meets the requirements set forth in 5 CFR 1320.3(b)(2).

Conditions for Coverage—Patient Admission, Assessment, and Discharge (§ 416.52)

Section 416.52(a) requires each patient to have a comprehensive medical history and physical assessment prior to the scheduled surgery date. The pre-surgical assessment must occur upon admission. Section 416.52(b) requires that an ASC conduct an evaluation of the patient's post-surgical condition. Section 416.52(c) requires ASCs to establish a discharge planning process that is applied to all patients. As part of the process, each patient must have a physician signed discharge order.

The burden associated with the aforementioned requirements in § 416.52 is the time and effort necessary to perform the assessments and to document the information in the medical record.

While this requirement is subject to the PRA, the burden is exempt as it meets the requirements set forth in 5 CFR 1320.3(b)(2).

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, *Attn.:* William N. Parham, III, [CMS–3887–P], Room C4–

26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* Carolyn Lovett, CMS Desk Officer, [CMS–3887–P] *Carolyn_Lovett@omb.eop.gov.* Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

If you choose to comment on issues in this section, please include the caption ''IMPACT'' at the beginning of your comments.

A. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This is not a major rule, since the overall economic impact for all proposed new Conditions for coverage is estimated to be $21 million annually.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We estimate there are approximately 4,600 Medicare participating ASCs (that includes both deemed and non-deemed facilities) with average admissions of approximately 1000 patients per ASC (based on the number of patients in ASCs in 2005 divided by the number of ASCs in 2005). Most ASCs are considered to be small entities, either by non-profit status or by having revenues of $9 million to $31.5 million in any one year (for details, see the Small Business Administration's regulation that sets forth size standards for health care industries at 65 FR 69432, November 17, 2000)). We certify that this rule would not have a significant impact on a substantial number of small entities because the cost of this rule is less than 1 percent of the total ASC Medicare revenue. According to the CMS 2005 national expenditure data, Medicare paid approximately $2.2 billion to ASCs in 2005.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This regulation will not have a significant impact on the operations of a substantial number of small rural hospitals since ASCs are designed to only provide procedures on an out-patient basis and thus are not competing with rural hospitals for in-patient procedures. In addition, most ASCs are located in nonrural areas.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. The proposed rule will not have an effect on the expenditures of State, local or tribal governments, and the impact on the private sector is estimated to be less than $120 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule has no Federalism implications and will not affect State and local governments.

Throughout this document, we have noted that a portion of ASCs are already implementing the changes that would be required if these proposed rules were made final. For purposes of burden estimates however, we are unable to accurately determine the number of ASCs that are already compliant with these proposed requirements. Therefore, we have decided to err on the high cost side and apply the derived cost estimates to the total number of ASCs participating in Medicare. Additionally, we believe the increased quality initiatives outlined in the regulation should have little or no effect on the benefit cost of ASC services.

B. Anticipated Effects on Ambulatory Surgical Centers

As described in the preamble, the proposed regulation presents new provisions, as well as provisions that are carried over from the existing ASC regulations. For purposes of this section, we have assessed only the impact of the new provisions. Other provisions have not been revised; and therefore, do not present a new burden to ASCs.

Table 1 contains data that is frequently used in this impact statement. The salary-related cost data is referenced from the *Salarywizard.com* Web site at *http://hrsalarycenter.salary.com.* Some of the requirements contained in the new provisions are already standard medical or business practices. Therefore, these requirements do not present an additional burden to ASC providers.

We recognize that in describing what the effect of this rule would be on ASCs, suggested burden estimates may not accurately reflect the experience of all ASCs. Facilities vary in the complexity of operations and processes, and therefore, associated costs may differ.

TABLE 1.—DATA USED THROUGHOUT THE IMPACT ANALYSIS *

Number of Medicare certified ASCs nationwide	4,600
Average number of patients per ASC	1000
Hourly rate of administrator	$46.00
Hourly rate of registered nurse	$39.00

* Hourly salary rates include base salary, bonuses, Social Security, 401k/403b, disability, healthcare, pension, and time off.

We are proposing revisions to the current conditions: Governing body and management; Evaluation of quality; and Laboratory and radiologic services conditions. The following new conditions are being proposed: Patient

rights, Infection control and Patient admission, assessment and discharge.

1. Anticipated Effects of the Governing Body and Management Provision (§ 416.41)

The proposed rule would expand the responsibility of the governing body to include the QAPI program and the creation and maintenance of a disaster preparedness plan. The governing body's specific responsibilities for QAPI are detailed in the new QAPI condition located at § 416.43(e). The assignment of burden for this requirement can be found under the description of the QAPI requirement.

The existing regulations require that ASCs meet certain safety requirements under § 416.44, Condition for coverage—Environment. We are working to establish emergency preparedness requirements for all providers/suppliers in a proposed rule that is currently under development. Issues relative to ASC cost and resources required to formulate and maintain an effective disaster preparedness plan will be discussed in the global regulation on emergency preparedness. In an effort to ensure ASCs are equipped to handle emergencies and disasters, we are proposing that ASCs develop a plan specific to disaster preparedness that would provide for the emergency care of patients in the event of unexpected events or circumstances that threaten their health. The plan would require an ASC to coordinate with appropriate State and local agencies and, as available, seek their advice on plan development. The plan would also require an annual review to test its effectiveness. It would be added as standard (c) under the Governing body and management condition.

In addition to annual review, the proposed rule also requires that the ASC staff be able to demonstrate, through annual drills and written evaluations, the ASCs ability to manage emergencies that are likely to occur within their geographic area. It would be added as standard (c) under the Governing body and management condition.

We estimate that an administrator, earning $46.00 per hour, would be largely responsible for developing the plan and for managing the yearly drills and evaluations. We are estimating that the yearly cost for one ASC to develop and implement a disaster preparedness plan will be approximately 4 hours at $46.00 per hour, with a net cost of $184.00 per ASC. Total cost for all ASCs would be $846,400.

2. Anticipated Effects of the Quality Assessment and Performance Improvement (QAPI) Provision (§ 416.43)

In section § 416.43, we are revising the section heading, Evaluation of quality, to read as Quality assessment and performance improvement. As part of the agency's efforts to establish regulatory consistency where possible among providers and suppliers, we have proposed adding a QAPI program that requires ASCs to continuously monitor quality improvement through focused projects, take efforts to measure improvements in patient health outcomes, identify barriers to improvements, and work to reduce medical errors. ASCs would also be expected to measure, analyze and track quality indicators, including adverse patient events, infection control, and other aspects of performance, including processes of care and services furnished in the ASC.

Once an area of concern is identified, the ASC would develop a plan for improvement designed to address these concerns. The ASC would determine the specifics of the plan, assess its effectiveness, and would continue to monitor the results learned.

This condition includes five standards: program scope, program data, program activities, performance improvement projects, and governing body responsibilities.

Many providers are already using some version of a comprehensive quality assessment and performance improvement program which they have either developed or obtained from other sources. We estimate that it would take 12 hours for ASCs to develop their own quality assessment performance improvement program. We also estimate that ASCs would spend 18 hours a year collecting and analyzing the findings. In addition, we estimate that ASCs would spend 4 hours a year training their staff and 18 hours a year implementing performance improvement activities. Both the program development and implementation functions would most likely be managed by the ASC's administrator. Based on an hourly rate of $46.00, the total cost of the quality assessment and performance improvement condition for coverage would be $2,392 per ASC.

The hourly burden is based on estimates that are found in the Hospital Conditions of Participation: Quality Assessment and Performance Improvement final rule (68 FR 3435, January 24, 2003). We estimated that a hospital would spend 80 hours collecting and analyzing information on 12 identified measures. According to our 2002 statistics, 5,985 hospitals discharged 11.8 million patients in 2000. This means that the statistically average hospital discharged approximately 2,000 patients that year. Collecting and analyzing data for 2,000 patients, we estimate that the implementation burden would take 80 hours. Based on the estimate, that the average ASC treats and discharges 1000 patients per year, we reduced the burden for ASCs to 40 hours. ASCs would be required to collect information in four areas: adverse patient events; infection control; processes of care; and services furnished in the ASC.

A new standard, Program scope, would require that the existing evaluation activities demonstrate measurable improvement in patient health outcomes. The proposed rule would also require the use of quality indicator data in the quality assessment and performance improvement program, but would not require any specific data collection or utilization, nor would it require ASCs to report the collected data. This would give the ASCs flexibility and minimize burden.

A proposed new standard, Program activities, would identify priority areas that an ASC must consider in its program. ASCs would be expected to carry out assessment activities according to the scope and complexity of their programs.

The proposed rule would require the governing body to become involved in all aspects of the quality assessment performance improvement program. We have estimated the burden based on management by an administrator. There should be direct and open communication between the program manager and the governing body. The analysis of a variety of reports, program prioritization, and allocation of resources are all standard business practices and therefore, we have not assigned additional burden to these functions.

TABLE 2.—SUMMARY OF QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT BURDEN

Standard	Time per ASC (hours)	Total time (hours)	Cost per ASC	Total cost
QAPI development	12	55,200	$552	$2,539,200
QAPI implementation	40	184,000	1,840	8,464,000
Total annually	52	239,200	2,392	11,003,200

The various ASC accreditation and professional health organizations (that is, The Joint Commission; American Association for the Accreditation of Ambulatory Surgical Facilities; Accreditation Association for Ambulatory Health Care; and the American Osteopathic Association) support advances in patient care in a number of ways and actively encourage health care entities to expand and improve their existing programs. These organizations are familiar with quality improvement programs and are likely to have actual or referral information available to assist ASCs in setting up their QAPI programs.

In developing a QAPI program, ASCs are urged to take advantage of the variety of information that exists from the industry. ASCs may also find that QAPI programs for other entities such as hospitals, can be adapted to fit certain needs.

3. Anticipated Effects of the Laboratory and Radiologic Services Provision (§ 416.49)

The proposed rule would add a specification that an ASC must meet the requirements of the Conditions for coverage for portable x-ray services under § 416.100 through § 416.110 if it is furnishing these services directly. In addition, there is a new requirement that radiologic services furnished under arrangement must be performed by an entity that is certified by Medicare as a supplier of portable x-ray services by meeting the Conditions for coverage for portable x-ray services. These additions reflect standard practice in the industry and present no additional burden.

4. Anticipated Effects of the Patient Rights Provision (§ 416.50)

The existing regulation does not contain a condition-level patient rights requirement. The proposed rule recognizes that ASC patients are entitled to certain rights that must be protected and preserved, and that all patients must be free to exercise these rights. The proposed rule details basic information that ASCs would be required to provide to patients: Notice of rights, exercise of patient rights and respect for property and person, privacy and safety, and confidentiality of clinical records. This condition also includes a requirement for Advance Directives, as specified at subpart I of part 489, and a requirement for the submission and investigation of grievances.

We have identified potential burden in the following areas.

a. Effects of the Notice of Rights—Verbal and Written Notice Provision

An ASC would be required to provide patients or their representatives with verbal and written notice of the rights and responsibilities of the patient prior to furnishing care to the patient. Generally, the most effective and efficient manner to furnish a written notice of rights is to initially develop a general notice which can be subsequently distributed as needed. We expect that an ASC will use this simple and inexpensive approach in order to meet this requirement. More than likely, this message would be written by a registered nurse or similar professional. A typical message might be in three parts: An introduction; the information section; and a section for follow up questions and issues. We expect the effort to develop this one-time message would not exceed 1 hour at a cost of $39.00 for each ASC. This would be a one-time cost for ASCs and would total $179,400 for all ASCs.

In many cases, notifying patients verbally of their rights is already being done and some ASCs may already be employing interpreters to make certain that patients who do not understand English fully understand their rights and responsibilities. However, for purposes of this analysis we will assume that all ASCs need to budget for this activity. The cost for language services can range from moderate hourly amounts to daily, full-time interpreters at $800 per day. Telephonic services are more reasonable and more accessible and can be purchased for $2.00 per minute. We are not able to determine the percentage of non-English speaking patients an ASC would care for in a year as that depends on a number of variables including the ASC's geographic location. In addition, the availability of in-person language services would also vary from location to location and while it may not be preferred, in some cases the use of family members may be necessary.

Given this discussion, we estimate that 3 percent of an average annual ASC caseload of 1000 cases might require interpreter services and 15 minutes of time would be needed for an interpreter to provide a general description of the rights to which the patient is entitled. We base this estimate on the fact that both Spanish and French are commonly spoken in some parts of the country. (Other than English, Spanish is the language most commonly spoken in 42 States.) We expect that friends and relatives of patients speaking these languages would be available to assist in understanding issues related to his or her scheduled procedure. Therefore, the need for an ASC to hire an interpreter in these cases would be infrequent. The ASC may have to take steps to arrange for interpreter services for some patients when other options are not available.

- Telephone interpreter services at $2.00/minute x 15 minutes = $30.00 per patient. The cost for telephone interpreter services is, for example, dependent upon the language, the consumed time, or frequency. Costs range from $75.00 an hour to $160.00 or more an hour. The figure of $2.00 per minute is an estimated average cost.
- 3 percent × 1000 patient caseload = 30 patients per year per ASC requiring interpreter services.
- $30.00 × 30 = $900 per ASC
- $900 × 4600 ASCs = $4,140,000 estimated cost total for all ASCs

b. Effects of the Advance Directives Provision

Each ASC would be required to establish an advance directive policy, and provide the patient or representative with verbal and written information concerning its policies on advance directives, including a description of applicable State laws and, if requested, official State advance directive forms. Each ASC would also be required to explain these policies to their patients, document whether an individual has executed an advance directive, and educate staff on the importance of advance directives. We expect that many ASCs already

communicate information about advance directives to their patients and thus, have already formulated some type of advance directives policy. We estimate that the development of an advance directives document utilizing generic advance directives forms obtained from existing Web sites or from State agency Web sites, by a registered nurse or equivalent will take 1 hour at $39.00 per ASC. The estimated cost for all ASCs is $179,400. We randomly queried a small sample of State Web sites and found generic advance directives forms in English and Spanish that were posted and available for downloading. The proposed rule would also require the ASC to document advance directive information in the patient's medical record, and to educate staff and patients about advance directives. We believe that these functions reflect standard industry practice, and therefore, would add no burden. While this requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the requirements of the Paperwork Reduction Act of 1995 as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by ASCs in the normal course of their activities.

c. Effects of the Submission and Investigation of Patient Complaints Provision

We estimate that an ASC may have to investigate complaints from approximately 1 percent (10 patients) of its caseload due to allegations of mistreatment, and neglect, for example. We are not aware of an existing repository of records that accurately identifies the number and exact nature of ASC complaints. Therefore, 1 percent is an estimate.

An investigation could average 1 hour and would be managed by an administrator. Ten hours could be spent by each ASC in this activity.

- 10 hours × $46.00 (administrator s hourly salary) = $460 estimated cost for each ASC
- $460 × 4600 ASCs = $2,116,000 estimated cost for all ASCs

In its resolution of the grievance, an ASC must investigate all allegations, document how the violation or grievance was addressed, and provide the patient with written notice of its decision containing the name of an ASC contact person, the steps taken to investigate the grievance, the results of the grievance process, and the date the grievance process was completed.

The burden associated with this requirement is the time and effort necessary to fully document the alleged violation or complaint and to disclose the written notice to each patient who filed a grievance. We estimate that, on average, it will take each ASC 15 minutes at a cost of $39.00 an hour to develop and disseminate 10 notices on an annual basis (2.5 hours per ASC), for a total ASC burden of 11,500 hours at a cost $448,500.00.

While this requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the requirements of the Paperwork Reduction Act of 1995 as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by ASCs in the normal course of their activities.

d. Anticipated Effects of the Exercise of Rights and Respect for Property and Person Provision

Since ASCs began operating under Medicare in 1982, and during that time they have had to provide information to patients about the procedures to be performed and the expected outcomes. The proposed rule would require that ASCs continue this practice. Therefore, we do not anticipate that ASCs will incur significant costs associated with this proposed requirement.

e. Anticipated Effects of the Privacy and Safety Provision

The current regulatory language requires that an ASC provide a safe and sanitary environment to protect the health and safety of patients. The proposed regulation would add the requirement that the patient has the right to personal privacy. We are defining personal privacy in this case as providing the patient access to an area of the ASC which is shielded from view from others to prepare for the procedure to be performed. This would mean a place to disrobe, speak with ASC personnel about issues and concerns and then get dressed following the procedure. We believe that if ASCs do not now have facilities similar to this, they are in the minority and would be experiencing criticism and significant reduction in patients. At the very least, patients expect and will demand privacy when disrobing. Consequently, we do not believe that this proposed requirement would be a significant burden to ASCs now operating.

f. Anticipated Effects of the Confidentiality of Clinical Records Provision

The current regulation at § 416.47 (a) requires that an ASC develop a system for the proper use of patient records. The proposed change merely provides a formal clarification of the current requirement's approach to how records are to be used. Specifically, an ASC is to respect the individual's right to maintain some control over his or her private medical information. The intent of the current regulation remains the same. In addition, most health care facilities recognize the need for privacy regarding patient medical records and have already instituted a policy, based on the HIPAA regulation that provides for a patient to sign a release before sensitive information is sent to others. Under the HIPAA regulation, patients have rights that protect their health information. Forty-eight States have medical privacy laws and Federal regulations at 45 CFR parts 160 and 164 are applicable to patients' health information. Some State laws are specific in prohibiting unlawful disclosure of patient information while, in other States, prohibitions are linked to laws governing specific medical entities. At the very least, most health care facilities are concerned about possible legal repercussions resulting from unauthorized use of patient clinical record information and have already instituted procedures to address this issue. Therefore, we do not believe this proposed rule will impose any significant additional financial or resource burdens on ASCs.

5. Anticipated Effects of the Infection Control Provision (§ 416.51)

We are proposing to elevate the current infection control requirements, located at § 416.44(a)(3), to the condition level. The ASC would be required to ensure that the infection control program minimizes infections and communicable diseases that could affect both patients and ASC staff. We are also requiring that a designated professional in the ASC be responsible for the program. We estimate the burden increase to be minimal, except for the proposed expense to make certain that the designated professional is familiar with infection control information.

ASCs are currently required to have a program that identifies and prevents infections, maintains a sanitary environment and reports results to the appropriate authorities. The proposed condition requires the ASC to designate a trained professional to be responsible for the ASC infection control program. The ASC can continue to designate the individual that currently oversees the infection control program; however, the ASC must also assure that the person who is designated has training or knowledge in infection control. Registered nurses with experience in

infection control could assume this duty. However, to ensure current knowledge of infection control methodologies and techniques, the designated person would need to engage in continuing education in infection control on a frequent or at least an annual basis. We estimate that an ASC would spend approximately $500 per calendar year on infection control training for the designated individual. This cost was based on the quantity of technical information that we believe is appropriate to be included in an infection control program. The cost also includes the time spent by the ASC infection control officer (the trainee), the cost for a qualified trainer and the training materials. We estimate that the course would run 4 hours. The total estimated cost for all ASCs would be $2,300,000.

The proposed infection control condition also includes the requirement that the infection control program be part of the ASC's QAPI program. We have not prescribed specific areas to be monitored or a process that must be followed to meet the requirement. We have not assigned any burden to this requirement because the ASC should already be evaluating quality activities and executing an infection control program. This requirement has been included as a formal way of ensuring it is an integral part of the ASCs QAPI process.

6. Anticipated Effects of the Patient Admission, Assessment and Discharge Provision (§ 416.52)

The proposed condition reflects a more patient-centered approach, improved quality of care, and more emphasis on patient outcomes. Specifically, we are proposing this new condition as a way of capturing specific patient care requirements in the pre-admission, pre-surgical, post-surgical and discharge phases of the ASC surgery process.

a. Effects of the Admission and Pre-Surgical Assessment Provision

We are proposing the completion of a comprehensive medical history and physical assessment no more than 30 days before the day of the scheduled surgery. The comprehensive medical history most likely will not be completed at the ASC. Therefore, there is no ASC burden associated with this requirement.

We are proposing a pre-surgical assessment be completed upon admission to the ASC. The assessment, which would be placed in the patient's medical record, would include a determination of the patient's physical and mental ability to undergo the surgical procedure. Current regulations at § 416.42(a) require a physician to examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed. Physicians must determine that patients, including those at high risk, are able to undergo the surgery itself and be able to manage recovery. Pre-surgical assessments represent a current standard of practice and do not pose additional burden.

To ensure the ASC healthcare team has all patient information available when needed, the medical history and physical assessment must be placed in the patient's medical record before the surgical procedure is started. There is no burden associated with this requirement.

b. Effects of the Post-Surgical Assessment Provision

The post-surgical assessment would require the ASC to ensure that a thorough assessment of the patient's post-surgical condition is completely documented in the medical record and that any post-surgical needs are addressed and included in the discharge notes. We are also proposing to retain the current standard at § 416.42(a) that requires a physician to evaluate each patient for anesthesia recovery before discharge. Post-surgical assessments reflect current ASC standard of practice, and therefore, do not pose additional burden.

c. Effects of the Discharge Provision

The discharge Standard requires the ASC to have a discharge planning process that assures all patients will have the best possible transition to home and that all post-surgical needs are met for all patients. The ASC would be required to provide each patient with a discharge order, signed by a doctor of medicine or osteopathy or the qualified practitioner who performed the surgery or procedure, indicating the patient has been evaluated for proper anesthesia and medical recovery and that the patient is approved for discharge from the ASC. Requiring the patient to have a signed discharge order by a doctor of medicine or osteopathy or the qualified practitioner who performed the surgery or procedure is standard practice. Therefore, we do not believe this is new burden for ASCs.

C. Alternatives Considered

One alternative was to maintain the existing CfCs without revisions; however, we concluded this was not a reasonable option because our existing CfCs are problem-focused. Under a problem-focused approach, the goal has been to ensure quality through the enforcement of prescriptive health and safety standards. This after-the-fact approach does not generally contribute to ASC improvement or stimulate broad-based quality of care initiatives.

Revising the existing CfCs would take advantage of continuing advances in the health care delivery field. We believe it is necessary to keep pace with growing demands for services. In addition, listed below are other alternatives.

1. Alternatives to the Governing Body and Management Provision (§ 416.41)

We considered not including the requirement for the disaster preparedness plan. However, as witnessed by the problems affecting health care facilities across the Gulf region in September 2005 as a result of Hurricane Katrina, we have proposed this requirement to ensure the safety of patients and staff members alike.

2. Alternatives to the Quality Assessment and Performance Improvement (QAPI) Provision (§ 416.43)

We discussed eliminating any reference to the use of quality indicator data, including patient care data. However, in light of the existing and proposed hospital, home health and rural health clinic quality assessment and performance improvement requirements, we believe ASCs also must begin to build a foundation where quality indicator data can be used to identify activities that lead to poor patient outcomes.

3. Alternatives to the Patient Rights Provision (§ 416.50)

We considered not requiring that an ASC provide both written and verbal notice of rights in a language that the patient understands as this might pose an insurmountable problem for ASCs. However, options for furnishing these rights are available (as noted earlier).

4. Alternatives to the Discharge Provision (§ 416.52)

We considered requiring the ASC to have a physician on the premises of the ASC whenever a patient is in the facility. However, we decided this might impose undue burden when there are circumstances when patients are present in the ASC facility before and after procedures that do not warrant the need for physician coverage. Therefore, we believe the proposed requirement of a signed discharge order, by a physician, that evaluates the patient for proper anesthesia and medical recovery will provide more flexibility and continue to

ensure proper physician coverage until the patient has completely recovered and physically left the ASC facility.

D. Conclusion

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. This is not a major rule, because the overall impact for all proposed new conditions is estimated to be $21 million annually. Moreover, a detailed assessment of the associated costs and benefits, as outlined by section 202 of the Unfunded Mandates Reform Act, will not be performed since the impact of this proposed regulation does not reach the $120 million threshold. Additionally, the potential costs associated with implementing the requirements of this regulation could be less than anticipated since a portion of ASCs have already implemented the changes that would be required if these proposed rules were made final.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 416 as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions and Definitions

2. Section § 416.2 is amended by—

A. Revising the definition of ''Ambulatory surgical center or ASC.''

B. Adding the definition of ''Overnight stay'' in alphabetical order.

The revision and addition reads as follows:

§ 416.2 Definitions.

As used in this part:

Ambulatory surgical center or ASC means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring an overnight stay following the surgical services, has an agreement with CMS to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part.

* * * * *

Overnight stay means the patient's recovery requires active monitoring by qualified medical personnel, regardless of whether it is provided in the ASC, beyond 11:59 p.m. of the day on which the surgical procedure was performed.

Subpart C—Specific Conditions for Coverage

3. Section 416.41 is revised to read as follows.

§ 416.41 Condition for coverage—Governing body and management.

The ASC must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation; has oversight and accountability for the quality assurance and performance improvement program; and ensures that facility policies and programs are administered so as to provide quality health care in a safe environment, and creates and maintains a disaster preparedness plan.

(a) *Standard: Contract services.* When services are provided through a contract with an outside resource, the ASC must assure that these services are provided in a safe and effective manner.

(b) *Standard: Hospitalization.*

(1) The ASC must have an effective procedure for the immediate transfer, to a hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.

(2) This hospital must be a local, Medicare-participating hospital or a local, nonparticipating hospital that meets the requirements for payment for emergency services under § 482.2 of this chapter.

(3) The ASC must—

(i) Have a written transfer agreement with a hospital that meets the requirements of paragraph (b)(2) of this section; or

(ii) Ensure that all physicians performing surgery in the ASC have admitting privileges at a hospital that meets the requirements of paragraph (b)(2) of this section.

(c) *Standard: Disaster preparedness plan.*

(1) The ASC must maintain a written disaster preparedness plan that provides for the emergency care of patients in the event of fire, natural disaster, functional failure of equipment, or other unexpected events or circumstances that are likely to threaten the health and safety of its patients.

(2) The ASC coordinates the plan with State and local agencies, as appropriate.

(3) The ASC conducts drills, at least annually, to test the plan's effectiveness. The ASC must complete a written evaluation of each drill and immediately implement any corrections to the plan.

4. Section 416.43 is revised to read as follows:

§ 416.43 Conditions for coverage—Quality assessment and performance improvement.

The ASC must develop, implement and maintain an ongoing, data-driven quality assessment and performance improvement (QAPI) program.

(a) *Standard: Program scope.*

(1) The program must include, but not be limited to, an ongoing program that demonstrates measurable improvement in patient health outcomes, and improves patient safety by using quality indicators or performance measures associated with improved health outcomes and with the identification and reduction of medical errors.

(2) The ASC must measure, analyze, and track quality indicators, including adverse patient events, infection control and other aspects of performance that includes processes of care and services furnished in the ASC.

(b) *Standard: Program data.*

(1) The program must incorporate quality indicator data including patient care and other relevant data regarding services furnished in the ASC into its QAPI program.

(2) The ASC must use the data collected to—

(i) Monitor the effectiveness and safety of its services, and quality of its care.

(ii) Identify opportunities that could lead to improvements and changes in its patient care.

(c) *Standard: Program activities.*

(1) The ASC must set priorities for its performance improvement activities that—

(i) Focus on high risk, high volume and problem-prone areas.

(ii) Consider incidence, prevalence and severity of problems in those areas.

(iii) Affect health outcomes, patient safety and quality of care.

(2) Performance improvement activities must track adverse patient events, examine their causes, implement improvements and ensure that improvements are sustained over time.

(3) The ASC must implement preventive strategies throughout the facility targeting adverse patient events and ensure that all staff are familiar with these strategies.

(d) *Standard: Performance improvement projects.*

(1) The number and scope of distinct improvement projects conducted annually must reflect the scope and complexity of the ASC's services and operations.

(2) The ASC must document the projects that are being conducted. The documentation at a minimum must include the reason(s) for implementing the project, and a description of the project's results.

(e) *Standard: Governing body responsibilities.* The governing body must ensure that the QAPI—

(1) Program is defined, implemented and maintained by the ASC.

(2) Program addresses the ASC's priorities and that all improvements are evaluated for effectiveness.

(3) Data collection methods, frequency and details are appropriate.

(4) Program expectations for safety are clearly established.

(5) Resources are adequately allocated for implementing the facility's program.

5. Section 416.49 is revised to read as follows:

§ 416.49 Condition for coverage—Laboratory and radiologic services.

(a) *Standard: Laboratory.* If the ASC performs laboratory services, it must meet the requirements of part 493 of this chapter. If the ASC does not provide its own laboratory services, it must have procedures for obtaining routine and emergency laboratory services from a certified laboratory in accordance with part 493 of this chapter. The referral laboratory must be certified in the appropriate specialties and subspecialties of service to perform the referred tests in accordance with the requirements of part 493 of this chapter.

(b) *Standard: Radiologic services.*

(1) The ASC must have procedures for obtaining radiological services from a Medicare approved facility to meet the needs of patients.

(2) When radiologic services are medically necessary and integral to the performance of surgical procedures the ASC must meet the requirements of the Conditions for Coverage for Portable X-ray Services under § 486.100 through § 486.110 of this chapter if it is furnishing these services directly. Radiologic services furnished under arrangement must be performed by an entity that is certified by Medicare as a supplier of portable x-ray services by meeting the Conditions for Coverage for Portable X-ray Services.

6. Add new § 416.50 to read as follows:

§ 416.50 Condition for coverage—Patients' rights.

The ASC must inform the patient or the patient's representative of the patient's rights, and must protect and promote the exercise of such rights.

(a) *Standard: Notice of rights.*

(1) The ASC must provide the patient or the patient's representative with verbal and written notice of the patient's rights prior to furnishing care to the patient and in a language and manner that the patient or patient representative understands. In addition, the ASC must—

(i) Post the written notice of patient rights in a place or places within the ASC likely to be noticed by patients (or their representative, if applicable) waiting for treatment. Notice of rights must include the name, address, and telephone number for a representative in the State agency to whom patients can report complaints about ASCs, as well as the Web site for the Medicare Beneficiary Ombudsman.

(ii) Disclose, if applicable, physician financial interests or ownership in the ASC facility in accordance with part 420 of this subchapter. Disclosure information must be in writing and furnished to the patient prior to the first visit to the ASC.

(2) *Advance directives.* The ASC must comply with the following requirements:

(i) Provide the patient or representative with verbal and written information concerning its policies on advance directives, including a description of applicable State law and, if requested, official State advance directive forms.

(ii) Inform the patient or representative of the patient's right to make informed decisions regarding their care.

(iii) Document in a prominent part of the patient's current medical record, whether or not the individual has executed an advance directive.

(3) *Submission and investigation of grievances.*

(i) The ASC must establish clearly explained procedures for documenting the existence, submission, investigation and disposition of a patient's written or verbal grievance to the ASC.

(ii) All alleged violations/grievances relating, but not limited to, mistreatment, neglect, verbal, mental, sexual or physical abuse, must be fully documented.

(iii) All allegations must be immediately reported to a person in authority in the ASC, the State and local bodies having jurisdiction, and the State survey agency if warranted.

(iv) The grievance process must specify time frames for review of the grievance and the provision of a response.

(v) The ASC, in responding to the grievance, must investigate all grievances made by a patient or the patient's representative regarding treatment or care that is (or fails to be) furnished.

(vi) The ASC must document how the grievance was addressed, as well as provide the patient with written notice of its decision. The decision must contain the name of an ASC contact person, the steps taken to investigate the grievance, the results of the grievance process, and the date the grievance process was completed.

(b) *Standard: Exercise of rights and respect for property and person.*

(1) The patient has the right to—

(i) Exercise his or her rights without being subjected to discrimination or reprisal.

(ii) Voice grievances regarding treatment or care that is (or fails to be) furnished.

(iii) Be fully informed about a treatment or procedure and the expected outcome before it is performed.

(2) If a patient is adjudged incompetent under State law by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

(3) If a State court has not adjudged a patient incompetent, any legal representative designated by the patient in accordance with State law may exercise the patient's rights to the extent allowed by State law.

(c) *Standard: Privacy and safety.* The patient has the right to—

(1) Personal privacy.

(2) Receive care in a safe setting.

(3) Be free from all forms of abuse or harassment.

(d) *Standard: Confidentiality of clinical records.* The patient has the right to confidentiality of his or her clinical records maintained by the ASC. Access to or release of patient information and clinical records is permitted only with written consent of the patient or the patient's representative or as authorized by law.

7. Add new § 416.51 to read as follows:

§ 416.51 Conditions for coverage—Infection Control.

The Ambulatory Surgical Center (ASC) must maintain an infection control program for patients and ASC staff that seeks to minimize infections and communicable diseases.

(a) *Standard: Sanitary environment.* The ASC must provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice.

(b) *Standard: Infection control program.* The ASC must maintain an ongoing program designed to prevent, control, and investigate infections and communicable diseases. The program is—

(1) Under the direction of a designated and qualified professional who has training in infection control.

(2) An integral part of the ASC's quality assessment and performance improvement program; and

(3) Responsible for providing a plan of action for preventing, identifying and managing infections and communicable diseases and for immediately implementing corrective and preventive measures that result in improvement.

8. Add new § 416.52 to read as follows:

§ 416.52 Conditions for coverage—Patient admission, assessment and discharge.

The ASC must develop specific assessments for each patient's medical needs with respect to their visit to the ASC.

(a) Standard: *Admission and pre-surgical assessment.*

(1) Not more than 30 days before the date of the scheduled surgery, each patient must have a comprehensive medical history and physical assessment completed by a physician (as defined in section 1861(r) of the Act) or other qualified practitioner in accordance with State law and ASC policy.

(2) Upon admission, each patient must have a pre-surgical assessment that includes, at a minimum, an updated medical record entry documenting an examination for any changes in the patient's condition since the most recently documented medical history and physical assessment. The assessment must include documentation to determine the patient's physical and mental ability to undergo the surgical procedure, and any allergies to drugs and biologicals.

(3) The patient's medical history and physical assessment must be placed in the patient's medical record before the surgical procedure is started.

(b) *Standard: Post-surgical assessment.*

(1) A thorough assessment of the patient's post-surgical condition must be completed and documented in the medical record.

(2) Post-surgical needs must be addressed and included in the discharge notes.

(c) *Standard: Discharge.* The ASC must—

(1) Provide each patient with written discharge instructions.

(2) Ensure the patient has a safe transition to home and that the post-surgical needs are met.

(3) Ensure each patient has a discharge order, signed by a physician or the qualified practitioner who performed the surgery or procedure unless otherwise specified by State law. The discharge order must indicate that the patient has been evaluated for proper anesthesia and medical recovery.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 30, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 22, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on August 21, 2007.

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August 31, 2007

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

Medicaid Program and State Children's Health Insurance Program (SCHIP); Payment Error Rate Measurement; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6026–F]

RIN 0938–AN77

Medicaid Program and State Children's Health Insurance Program (SCHIP); Payment Error Rate Measurement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth the State requirements to provide information to us for purposes of estimating improper payments in Medicaid and SCHIP. The Improper Payments Information Act of 2002 (IPIA) requires heads of Federal agencies to estimate and report to the Congress annually these estimates of improper payments for the programs they oversee, and submit a report on actions the agency is taking to reduce erroneous payments.

This final rule responds to the public comments on the August 28, 2006 interim final rule (71 FR 51050) and sets forth State requirements for submitting claims and policies to the CMS Federal contractors for purposes of conducting fee-for-service and managed care reviews. This final rule also sets forth the State requirements for conducting eligibility reviews and estimating case and payment error rates due to errors in eligibility determinations.

DATES: *Effective Date:* These regulations are effective on October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Janet E. Reichert, (410) 786–4580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (IPIA), Pub. L. 107–300, enacted on November 26, 2002, requires the heads of Federal agencies annually to review programs they oversee that are susceptible to significant erroneous payments, to estimate the amount of improper payments, to report those estimates to the Congress, and to submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defines ''significant erroneous payments'' as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M–03–13, May 21, 2003 and OMB M–06–23, August 10, 2006). For those programs with significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

According to the OMB directive, Federal agencies must include in the report to the President and Congress: (1) The estimate of the annual amount of erroneous payments; (2) a discussion of the causes of the errors and actions taken to correct those problems, including plans to increase agency accountability; (3) a discussion of the amount of actual erroneous payments the agency expects to recover; (4) limitations that prevent the agency from reducing the erroneous payment levels, that is, resources or legal barriers; and (5) a target for the program's future payment rate, if applicable.

The Medicaid program and the State Children's Health Insurance Program (SCHIP) were identified by OMB as programs at risk for significant erroneous payments. OMB directed the Department of Health and Human Services (DHHS) to report the estimated error rates for the Medicaid and SCHIP programs each year for inclusion in the Performance and Accountability Report (PAR).

Through the Payment Accuracy Measurement (PAM) and Payment Error Rate Measurement (PERM) pilot projects that CMS operated in Fiscal Years (FYs) 2002 through 2005, we developed a claims-based review methodology designed to estimate State-specific payment error rates for all adjudicated claims within 3 percent of the true population error rate with 95 percent confidence. An ''adjudicated claim'' is a claim for which either money was obligated to pay the claim (paid claims) or for which a decision was made to deny the claim (denied claims).

B. CMS Rulemaking

Section 1102(a) of the Social Security Act (the Act) authorizes the Secretary to establish such rules and regulations as may be necessary for the efficient administration of the Medicaid and SCHIP programs. The Medicaid statute at section 1902(a)(6) of the Act and the SCHIP statute at section 2107(b)(1) of the Act require States to provide information that the Secretary finds necessary for the administration, evaluation, and verification of the States' program. Also, section 1902(a)(27) of the Act (and 42 CFR 457.950) requires providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both.

Under the authority of these statutory provisions, we published a proposed rule on August 27, 2004 (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. Based on the methodology developed in the pilot projects, the proposed rule set forth provisions for all States annually to estimate improper payments in their Medicaid and SCHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimates for these programs. The intended effects of the proposed rule were to have States measure improper payments based on FFS, managed care, and eligibility reviews; to identify errors; to target corrective actions; to reduce the rate of improper payments; and to produce a corresponding increase in program savings at both the State and Federal levels.

After extensive analysis of the issues related to having States measure improper payments in Medicaid and SCHIP, including public comments on the provisions in the proposed rule, we revised our approach. Our revised approach adopted the recommendation to engage Federal contractors to review State Medicaid and SCHIP fee-for-service (FFS) and managed care claims (we define the term ''*claims*'' to include both managed care capitation payments and FFS line items) and to calculate the State-specific and national error rates for Medicaid and SCHIP. States will calculate the State-specific eligibility error rates. Based on these rates, the Federal contractor will calculate the national eligibility error rate for each program. We also adopted the recommendation to sample a subset of States each year rather than to measure every State every year. We adopted these recommendations primarily in response to commenters' concerns with the cost and burden to implement the regulatory provisions at the State level that the proposed rule would have imposed on States.

Since our revised approach departed significantly from the approach in the proposed rule, we published an interim final rule with comment period on October 5, 2005 (70 FR 58260). The October 5, 2005 interim final rule with comment period responded to the public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset

of States. Our State selection will ensure that a State will be measured once, and only once, every 3 years for each program. For each fiscal year, we stated that we expected to measure up to 18 States. We also stated that we would use a rotational approach to review the States' Medicaid programs. The rotation allows States to plan for the reviews because States know in advance in which year they will be measured. At the end of the first 3-year cycle, the rotation will repeat so that the FY 2006 States will be reviewed again in FY 2009; the FY 2007 States will be reviewed again in FY 2010; and the FY 2008 States will be reviewed again in FY 2011. The rotation will continue in this manner for future years.

In determining the Medicaid State selection, we grouped all States into three equal strata of small, medium, and large, based on the States' most recently available FFS annual expenditure data. We randomly selected up to six States from each stratum each year, until we selected all States for the first cycle of FY 2006 through FY 2008. We announced the Medicaid State selection rotation in the October 5, 2005 interim final rule and also through a State Health Official Letter released to all States on November 18, 2005.

In the October 5, 2005 interim final rule, we stated that it was still possible that States sampled for review would be required to conduct eligibility reviews as described in the proposed rule. We also announced our intentions to establish an eligibility workgroup to make recommendations on the best approach for reviewing Medicaid and SCHIP eligibility within the confines of current statute, with minimal impact on States and additional discretionary funding. We convened an eligibility workgroup comprised of DHHS (including CMS and, in an advisory capacity, the Office of the Inspector General (OIG)), OMB, and representatives from two States. We determined that States should conduct the eligibility measurement and developed an eligibility measurement methodology based on the workgroup's consideration of public comments, the examination of various approaches proposed in such comments, and the suggestions of the panel members.

The October 5, 2005 interim final rule also set forth the types of information that States would submit to the Federal contractors for the purpose of estimating Medicaid and SCHIP FFS improper payments and invited further comments on methods for estimating eligibility and managed care improper payments. We received very few comments regarding managed care and a number of comments regarding eligibility.

Based on the public comments and recommendations from the eligibility workgroup, we published a second interim final rule on August 28, 2006 (71 FR 51050), which set forth the methodology for measuring improper payments in Medicaid and SCHIP FFS, managed care, and eligibility in 17 States and invited further public comments on the eligibility measurement.

C. IPIA Compliance

We expect to be fully compliant with IPIA requirements by the year 2008. We measured Medicaid FFS improper payments in FY 2006 and plan to have all components (FFS, managed care, and eligibility) of Medicaid and SCHIP measured in FY 2007 for reporting in the FY 2008 Performance and Accountability Report (PAR).

These measurements in 17 States each year will produce State-specific component error rates as well as composite program error rates for the State's Medicaid and SCHIP programs. From the State-specific error rates, we will calculate national error rates for each of the components and for the Medicaid and SCHIP programs.

We expect State corrective actions to address the causes of error in each of the program components. As a result, we expect States will reduce their program error rates over the course of each measurement cycle which, in turn, should reduce the national error rates.

II. Provisions of the August 28, 2006 (Second) Interim Final Rule

We published a second interim final rule with comment period on August 28, 2006 that responded to comments on the October 5, 2005 initial interim final rule with comment period. In the August 28, 2006 interim final rule, we reiterated our national contracting strategy to estimate improper payments in both Medicaid and SCHIP fee-for-service and managed care claims and set forth the State requirements for estimating improper payments due to errors in Medicaid and SCHIP eligibility determinations. We also announced that a State's Medicaid and SCHIP programs would be reviewed in the same year.

A. Selecting SCHIP States for Review

After the October 2005 Medicaid State selection, we decided on the SCHIP State selection for the PERM measurement beginning with FY 2007. We determined that SCHIP could be measured in the same States selected for Medicaid review each fiscal year with a high probability that the SCHIP error rate would meet OMB requirements for confidence and precision levels.

We believe that paralleling the SCHIP and Medicaid measurements will minimize administrative complexities for both CMS and the States. Measuring both programs at the same time may further reduce the State cost and burden because States are able to plan activities for both measurements and may gain efficiencies by combining staff and resources for the reviews.

We announced in the August 28, 2006 interim final rule our decision to measure Medicaid and SCHIP in a State at the same time. We also sent a State Health Official Letter to all States regarding the SCHIP State selection on August 30, 2006. As with Medicaid, we stated that we expected to measure improper payments in all components of SCHIP in FY 2007 and beyond. The selection of States for the first PERM cycle of FY 2006 through FY 2008 is listed below. Note that, for States measured for Medicaid FFS in FY 2006, all three components of Medicaid and SCHIP will be measured in FY 2009.

MEDICAID AND SCHIP STATE SELECTION

FY 2006	Pennsylvania, Ohio, Illinois, Michigan, Missouri, Minnesota, Arkansas, Connecticut, New Mexico, Virginia, Wisconsin, Oklahoma, North Dakota, Wyoming, Kansas, Idaho, Delaware.
FY 2007	North Carolina, Georgia, California, Massachusetts, Tennessee, New Jersey, Kentucky, West Virginia, Maryland, Alabama, South Carolina, Colorado, Utah, Vermont, Nebraska, New Hampshire, Rhode Island.
FY 2008	New York, Florida, Texas, Louisiana, Indiana, Mississippi, Iowa, Maine, Oregon, Arizona, Washington, District of Columbia, Alaska, Hawaii, Montana, South Dakota, Nevada.

B. PERM Measurement Cycle

We stated in the August 28, 2006 interim final rule that the process for measuring improper payments, called the ''production cycle,'' under the national contracting strategy would take approximately 23 months per cycle. Using FY 2006 as an example, we provided the following table as an approximate overview of the PERM process. It is important to note that the process is fluid, so timeframes may fluctuate slightly depending on such factors as the complexities of the reviews.

EXAMPLE OF THE PERM PRODUCTION CYCLE: FY 2006

[Note: only illustrates Medicaid FFS]

Timeframe	Event
December 1, 2005	• States submit medical policies in effect for the review period to the DDC.
January 15, 2006	• States submit 1st quarter FY 2006 (October–December 2005) adjudicated claims to the SC.
February 1, 2006	• State submits 1st quarter FFS policy updates to the DDC.
April 15, 2006	• States submit 2nd quarter FY 2006 (January–March 2006) adjudicated claims to the SC.
May 1, 2006	• States submit 2nd quarter policy updates to the DDC.
July 15, 2006	• States submit 3rd quarter FY 2006 (April–June 2006) adjudicated claims to the SC.
August 1, 2006	• States submit 3rd quarter policy updates to the DDC.
October 15, 2006	• States submit 4th quarter FY 2006 (July–September 2006) adjudicated claims to the SC.
November 1, 2006	• States submit 4th quarter policy updates to the DDC.
Throughout PERM process	• States identify and resolve differences in review findings with the RC.

C. Use of Federal Contractors to Review FFS and Managed Care Claims

In the August 28, 2006 interim final rule, we reiterated that, under the national contracting strategy, we would use Federal contractors to measure Medicaid and SCHIP FFS and managed care improper payments. We believe the use of more than one CMS Federal contractor allows for the award of contracts in areas of specialization and expertise, minimizes potential problems with the error rate measurement process if one contractor experiences operational difficulties, and provides us with optimum oversight. However, we may revise our use of multiple contractors in the future if warranted by our experience as the program matures, for example, if we can gain efficiencies. For FYs 2006 and 2007, we awarded three contracts: (1) A statistical analysis contract; (2) a documentation/database contract; and (3) a review contract.

The statistical contractor (SC) collects adjudicated claims data, determines the sample size, draws the sample, and calculates the State and national error rates. The documentation/database contractor (DDC) standardizes State data, collects and stores State medical and other related policies, and requests the medical records from providers for the FFS medical reviews. The review contractor (RC) conducts the medical and data processing reviews on the States' FFS and managed care claims.

In the August 28, 2006 interim final rule, we indicated that the States' responsibilities to support the improper payments measurement for both Medicaid and SCHIP would include submission of information on managed care. We stated that the States selected for review would submit to the SC the following information for Medicaid and SCHIP:

- All adjudicated FFS and managed care claims information from the review year on a quarterly basis, with FFS claims stratified into seven strata by service type and one additional stratum for denied claims;
- Information on claims that were selected as part of the sample, but which changed in substance after selection (for example, successful provider appeals); and
- Adjustments made within 60 days after the adjudication dates for the original claims or line items, with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items.

We required States to provide stratified FFS claims data because we believed that stratifying the claims by service type would improve the efficiency of the sampling methodology by distributing the claims in the sample in proportion to the dollar share in the universe. Stratification allows services with a larger dollar share to compose a larger share of the sample and reduces the variance in the sample. Stratifying the claims also allows for smaller sample sizes and for the identification of errors in specific service types so that States would have information that could be helpful to target causes of errors.

Based on the annual expenditure data, the SC would determine the State's sample size and, for FFS claims, the sample size for each of the eight total strata. These strata were established during the pilot projects based on the total share of dollars. States had already grouped their claims similarly in their Medicaid Management Information System (MMIS); therefore, we believed that the stratification of claims for submission would not be burdensome to States.

We established the following strata: (1) Hospital services; (2) long term care services; (3) other independent practitioners and clinics; (4) prescription drugs; (5) home and community based services; (6) other services and supplies (for example, durable medical equipment, clinical lab tests, and x-rays); (7) primary care case management; and (8) denied claims.

From the State's quarterly adjudicated claims data, the SC would randomly select a sample of FFS and managed care claims each quarter. Each selected FFS claim would be subjected to a medical and data processing review. Managed care claims would not be stratified or subjected to medical reviews because the payments made to a managed care plan are based on a set fee from a predetermined capitation agreement, rather than for the specific service(s) provided. We expected that the sample size would be 1,000 FFS claims and 500 managed care claims per State per program in order to achieve a 3 percent precision level at the 95 percent confidence level (based on a range estimated during the PAM/PERM pilots).

For review of the sampled claims, States would provide the DDC the following information for Medicaid and SCHIP:

- All medical and other related policies in effect for the review year and any quarterly policy updates;
- Current managed care contracts, rate information, and any quarterly updates to contracts and rates for the review year for SCHIP and, as requested, for Medicaid; and

• Upon request from the contractor, provider contact information that has been verified by the State as current.

States selected for review also would provide the RC the following information for Medicaid and SCHIP:

• Systems manuals for data processing reviews. (If a State's medical and data processing policies are intertwined, the State may send the policies to the DDC. The DDC would then identify the data processing policies so the RC could access them through the DDC.)

• Repricing information, as requested by the RC, for claims that the RC determined to be improperly paid. The RC would request that States submit the price that should have been paid so that, for claims that were found to be in error, the RC would be able to determine the amount of the improper payment.

The August 28, 2006 interim final rule also set forth a difference resolution process whereby States would be provided disposition reports listing the contractor's review finding on each claim. Based on these reports, States would be able to dispute error findings.

When the reviews were completed, the SC would estimate the State-specific error rates for the FFS and managed care components of the Medicaid and SCHIP programs. States (using the eligibility methodology set forth in the August 28, 2006 interim final rule to conduct eligibility reviews beginning in FY 2007) would calculate and report the State-specific eligibility error rates to us. These measurements also will produce component error rates for the State's Medicaid and SCHIP programs. From the State-specific error rates, we will calculate national error rates for each of the components and for the Medicaid and SCHIP programs.

Once the State-specific and national error rates were estimated, the States would develop and send to us corrective action reports describing corrective actions that the States would implement to address the major causes of improper payments. The States would review their error rates, determine root causes of error-prone areas, and develop corrective actions to address the major error causes for purposes of reducing the payment error rates. States selected for review would provide us with the following information for Medicaid and SCHIP:

• A corrective action report for purposes of reducing the State's payment error rates in the FFS, managed care, and eligibility components of the program; and

• Other information that the Secretary determined necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

We stated that we would request information we found during the course of measuring each program that would improve the process, produce more accurate error rates, or reduce the cost and burden on either or both the State and Federal governments. Similarly, we stated that, if we determined that we were collecting specific information that did not add value to the error rate measurement or was not productive to collect, we would discontinue that collection.

D. Eligibility Measurement

In the August 28, 2006 interim final rule, we set forth the eligibility measurement methodology developed through the eligibility workgroup and through our consideration of public comments submitted in response to the October 5, 2005 initial interim final rule. The eligibility measurement methodology is summarized below:

• A State would review program eligibility in the year it was scheduled for review for FFS and managed care improper payments. The eligibility reviews would be conducted by a State agency that was functionally and physically independent of the State agency making the program policy and eligibility determinations.

• The Medicaid and SCHIP eligibility sample universes would consist of both active cases (individuals enrolled in the program) and negative cases (individuals denied or terminated from the program).

• Medicaid and SCHIP cases in the active universe would be stratified into three strata: (1) Applications, (2) redeterminations, and (3) all other cases. Negative case action samples would not be stratified in either program.

• A State would calculate its eligibility error rates for active cases (including undetermined cases) and negative cases.

• States would submit the following to CMS:

—A sampling plan for approval (which would be submitted 60 days before the beginning of the fiscal year selected for review);

—A monthly sample selection list that identified the cases selected for review (to be submitted each month and before commencing the reviews);

—Detailed findings on the cases reviewed;

—Summary findings on the cases reviewed; and

—State-specific case and payment error rates for active cases, case error rates for negative cases, the number and amount of undetermined cases, and the total amount of payment from all undetermined cases in the active case sample, to be submitted by July 1 after the end of the fiscal year under review.

We invited further comment on this methodology for measuring improper payments due to errors in eligibility determinations.

III. Analysis of and Responses to the Public Comments on the August 28, 2006 Interim Final Rule

We received a total of 33 comments: 28 from State agencies, 3 from consumer advocacy and other groups and 2 from individuals. These commenters reiterated some of the comments from the proposed rule to which we responded in the October 5, 2005 and August 28, 2006 interim final rules. Although we are not required to respond to these comments again, we are summarizing the comments in this final rule and providing our responses for the convenience of the reader. Below are the comments on the August 28, 2006 interim final rule and our responses.

Most comments responded to our invitation for further comment on the PERM eligibility measurement process. Commenters also indicated that, although the August 28, 2006 interim final rule significantly reduced the burden on the States by using a Federal contracting strategy and limiting State selection to once every 3 years, they believed that the August 28, 2006 interim final rule still placed an undue technical and financial burden on the States to assist the Federal contractors.

A. Purpose, Basis, and Scope

1. Payment Error Rates

Comment: Several commenters asserted that a State error rate is not required by IPIA and funds are wasted in establishing a payment error rate. The commenters also maintained that State audits could identify improper payments. The commenters stated that a national sampling framework should be used to measure a national error rate, and that CMS should abandon the proposed State-level error rate in favor of a national error rate and sampling plan.

Response: As we observed in the October 5, 2005 and August 28, 2006 interim final rules, the IPIA requires the Secretary to estimate the amount of improper payments in programs and activities that are susceptible to significant improper payments and report those estimates to the Congress. OMB has identified Medicaid and SCHIP as programs at risk for significant

improper payments. Because States administer these programs and because there is wide variation in States' coverage, eligibility, benefit, and reimbursement policies for these programs, we must rely on State-specific information to develop State-level estimates as the basis for a national program error rate.

In addition, even though State audits may identify improper payments, we could not be confident that States' audit procedures would be similar and would be consistently applied nationwide or would produce statistically reliable information on which a national rate could be based. Finally, we have stated that the PERM program is intended to fulfill the requirements of the IPIA; it is not intended to supplant, enhance, or change other program integrity activities in which the States are currently engaged.

Comment: One commenter suggested that the national error rate be computed using State error rates that are weighted against dollar volume in other States to ensure that each State's contribution to the error rate is clear, balanced, and consistently calculated at all levels of data analysis.

Response: The national error rate is calculated as the outcome of a two-stage sampling process. States were placed into one of three strata. These strata consist of the large, medium, and small States as measured by Medicaid expenditures. For each of the three rotations, 17 States were randomly selected from three strata. Beginning in FY 2007, for the States sampled in each year, claims and payments are sampled for Medicaid and SCHIP fee-for-service and managed care. Sufficient numbers of claims and payments are sampled to estimate an error rate for the State at a precision level of plus or minus 3 percentage points with 95 percent confidence. Then, within each of the three strata, an error rate is calculated to represent the error rate of that stratum. Finally, a national error rate is calculated by computing the error rates across the three strata, where each stratum's rate is weighted by the share of expenditures for that program represented by its strata. The variance in this estimate is calculated by taking into account: (1) The variance of the error rate of the individual States in the sample, and (2) the variance in the original sample of States from the three strata. The error rate is based on the total error, not the State or Federal share.

Comment: One commenter suggested that States should be allowed to calculate error rates based on either the difference method or ratio method.

Response: Our statistical contractor will calculate the State-specific error rates for FFS and managed care. In general, the ratio method of estimating the error rate is formed using data from the sample. From the sample, the dollar value of claims or payments in error enters the numerator, while the dollar value of payments (both those made in error and those that are valid) enters into the denominator. This ratio is the error rate.

In general, the ''difference'' estimator is calculated as follows. The dollar value of each error (the difference between what should have been paid and what was paid) in the sample is added, with weights equal to the inverse of the sampling frequency for the respective claim or line item. This provides an estimate of the total dollars in error for the universe or population for which the inference is made. This becomes the numerator of the error rate. The denominator of the error rate is actual payments made for the universe or population. The denominator is non-stochastic, that is, non-random. This ratio, then, provides an estimate of the error rate.

Because the actual payments made by the State for the universe or population may not be available when we calculate the error rate, we plan to use the ratio estimator.

Comment: A commenter observed that, in the August 28, 2006 interim final rule, we responded to a comment regarding the likelihood of achieving a national error rate by aggregating error rates from all the States' programs with their inherent variations. We stated that, ''(b)y drawing a stratified random sample of States and then reviewing a random sample of claims within each of those States (using each State's program policies), we are able to obtain an estimate of the national error rate without having to conduct reviews on all claims. This methodology will produce the estimate and the precision level of the estimated national error rate, within the parameters set by OMB.'' The commenter asserted this logic is circular and stated that more information is needed to explain how this process would work.

Response: The process is based on sampling. By sampling, one can obtain an estimate of a population parameter, such as the mean dollar value of a Medicaid claim for a State, without having to examine every claim in that State's universe. The larger the sample size, the more precise the estimate of the mean value will be. For most populations, one can typically obtain a very precise estimate of the population parameters, such as the mean, by sampling far fewer than the entire population or universe. Based on the outcome of the sample, one can make an inference regarding the values of the true population mean, for example, and a statement of the probability or likelihood that a small range around the sample estimate captures the population's true mean.

The national error rate is calculated as the outcome of a two-stage sampling process. First, States are sampled. Then, claims are sampled within the State.

States were placed into one of three strata. These strata consist of the large, medium, and small States as measured by Medicaid expenditures. For each year, a total of 17 States were randomly selected from the three strata. For States sampled in each strata, claims and payments are sampled for Medicaid and SCHIP fee-for-service and managed care. A sufficient number of claims and payments are sampled to estimate an error rate at a precision level of plus or minus 3 percentage points with 95 percent confidence for that State. Then, within each of the three strata, an error rate is calculated based on the States sampled in that stratum. Finally, a national error rate is calculated by estimating the error rate for the population of all States as a weighted average of the error rates within each stratum. The variance in this estimate is calculated by taking into account the variance of the error rate of the individual States in the sample and the variance in the original sample of States from the three strata.

Comment: A commenter would like to know the operational benefit of a national error rate to the States if they will be measured against their individual rates rather than a national average.

Response: The Improper Payments Information Act of 2002 (IPIA) requires CMS to estimate and report to the Congress annual estimates of improper payments. The national error rate for SCHIP and Medicaid will be reported to the Congress as required by law. States will use their State-specific error rates to implement corrective action plans. We believe that these plans will ultimately reduce the national error rate.

Comment: A commenter asked what assurance States would have that comparisons among States would not be made when the error rates were reported. Because of the wide variation in States' Medicaid and SCHIP programs, this assurance is needed in order to reassure States that unwarranted comparisons are not being made.

Response: We agree that care should be taken in comparing the State error rates due to variation in State programs.

Comment: A commenter requested that CMS develop methods to communicate with States regarding their responsibilities, timelines, and completion expectations.

Response: We have communicated with States through kick-off calls and one-on-one calls with each State involved in each year's measurement. In addition, we post all instructions, letters and questions and answers on our CMS PERM Web site at *http://www.cms.hhs.gov/PERM* for all States to review.

Comment: A commenter stated that, since PERM is measured in a 3-year cycle, the ''national average'' error rate cannot be compared year-to-year.

Response: We believe there are several approaches to assess the improvement in the reduction of improper payments year-to-year and over the years.

Comment: Two commenters believed that State program integrity efforts are in jeopardy because claims from providers under active fraud investigation are included in the universe. The commenters believed that (1) The error rate will be inflated because fraudulent and abusive providers are not likely to respond to requests for medical records; (2) providers can create, alter, or destroy documentation and evidence when they are alerted that their claims are investigated; and (3) false, fraudulent, and abusive claims can only be identified by interviewing recipients and reviewing medical records.

Response: We do not intend to jeopardize States' provider fraud investigations based on our review of FFS and managed care claims. Therefore, if a FFS or managed care claim sampled under PERM is part of a fraud investigation and the State notifies the statistical contractor of this fact, the claim will not be subject to review under PERM. However, we will cite the claim as an error. We believe the State, in this instance, also believes the claim is in error since the State is investigating the provider for fraud. For purposes of the eligibility review, which is conducted on individual beneficiary cases rather than claims, cases under beneficiary fraud investigation are excluded from review.

Comment: A commenter asked for clarification on whether the IPIA is intended to root out provider fraud or challenge program enrollment decisions. The commenter stated that those functions are under the purview of other Federal and State initiatives.

Response: We agree that the IPIA is not intended to root out these problems. The IPIA is intended to identify improper payments, and provider fraud may be discovered during the course of the measurement. In addition, erroneous Medicaid and SCHIP program enrollment decisions may be discovered during the eligibility reviews. The discovery of these problems would be addressed by the State through corrective actions.

Comment: A commenter indicated that the rule does not explain if extrapolations will be conducted and if error rates will be reported based on claims, dollar amount, or both.

Response: The method for estimating error rates is based on sampling from the population or universe. From the sample, inferences (or extrapolations) are drawn regarding specific population or universe values, such as the error rate for the population. The active case eligibility error rates will be dollar-weighted error rates. The dollars assigned to the case will be those associated with the claims that are collected for the recipient. The sample sizes for the active cases were constructed to achieve an estimate of the State's dollar-weighted error at a precision level of plus or minus 3 percentage points with 95 percent confidence. The State level active case eligibility error rates will be a component of a national active case eligibility error rate. A simple binomial error rate (valid/invalid) will be calculated for the active case error rate, and a binomial (valid/invalid) error rate will be calculated for negative cases.

The Medicaid and SCHIP error rates for both fee-for-service and managed care will be calculated and reported based on the dollar value of the line items or payments sampled. The sample sizes were constructed to achieve a precision level for each of the programs (Medicaid and SCHIP fee-for-service and managed care) of plus or minus 3 percentage points with 95 percent confidence. The State level error rates will also be used to estimate national error rates for these programs, which are expected to achieve a precision level of plus or minus 2.5 percentage points with 90 percent confidence.

To summarize, the methodology is to sample from the population or universe, and then use the sample results to infer or extrapolate the error rate for the population.

2. State Selection

Comment: A commenter stated that States were led to believe that each program would be measured on an alternating or rotational basis. By measuring Medicaid and SCHIP in the same year, the commenter believes that CMS has unilaterally increased the State's cost and burden by 100 percent. According to the commenter, this decision is contrary to the supporting statement issued with the initial request to gain OMB approval (71 FR 30409) published May 26, 2006.

Response: We believe that State cost and burden could actually be reduced by measuring both programs in the same year. States would have to measure errors in both programs at some point. By evaluating them simultaneously, we believe efficiencies will be gained that may lower costs and burden. We stated in both published interim final rules that we would rotate the States, not the programs. We reiterate, in this final rule, that each State will be measured on a rotational basis.

Comment: A commenter stated that the proposed random selection of States to be reviewed under the PERM program makes it difficult to predict the resources needed for PERM-related activities. If not forthcoming, States could be held responsible for time delays in the program.

Response: In the August 28, 2006 interim final rule, we stated that we will use a rotational approach to review the States in Medicaid and SCHIP. We released instructions explaining the selection of the States to be reviewed under the PERM program through an October 10, 2006 State Health Official letter. This information was also posted on the CMS PERM Web site at *http://www.cms.hhs.gov/PERM*. Further, we stated that we believe that the rotation will allow States to plan for the reviews because States will know in advance in which year they will be measured.

3. Use of National Contractor

Comment: A commenter stated that Generally Accepted Government Auditing Standards (GAGAS) require States to review and comment on contractor-generated PERM working papers and findings for quality control purposes. The commenter asserted that the contractor's findings should not be deemed final or actionable until this review is complete. In addition, the commenter stated that the cost of this review must be included in the rules, which, according to the commenter, does not appear to be the case.

Response: The PERM program does not require States to use GAGAS. GAGAS is issued by the Comptroller of the United States as auditing standards for governmental audits. The PERM program is not an audit and as such, GAGAS would not be applicable. However, under PERM, States have the

opportunity through the difference resolution process to review error findings. States also have the opportunity to further dispute error findings by appealing to CMS.

Comment: A commenter applauded the use of national contractors but did not believe the contractors have the required knowledge to complete the reviews under CMS' current schedule. The commenter believed additional time is needed for the transfer of knowledge from State to contractor.

Response: The contractors will work closely with the States during the measurement process to ensure that program knowledge is transferred. We believe this will help mitigate delays in the process that might be encountered otherwise.

Comment: A commenter asked how many days after the quarter ends would State information have to be submitted to the statistical contractor. The commenter stated that no details were provided on page 51053 of the **Federal Register** publication of the August 28, 2006 interim final rule.

Response: Our statistical contractor's instructions request that State information be submitted to the statistical contractor no later than 15 days after the quarter ends.

Comment: A commenter asked CMS to further clarify the format in which States will be required to submit data for PERM compliance purposes and whether the data would need to be coded.

Response: The operational details are contained in the instructions that the statistical contractor sends to the States being measured at the beginning of each quarter.

Comment: A commenter stated that the delay in collecting provider documentation does not allow enough time for a State to respond to any findings or perceived errors. The commenter does not believe that hiring three contractors is effective in measuring error rates.

Response: We believe that having three contractors is effective because the program is not jeopardized or substantially delayed if one contractor experiences problems; the other contractors could continue their respective aspects of the measurement. We agree that the 90-day timeframe to collect medical records from providers may not allow States adequate time to resolve errors with the RC through the difference resolution process. In order to expedite the difference resolution process within the overall timeframe for calculating annual error rates under PERM, and provide States with adequate time to respond to our contractor's proposed findings, we will issue guidance instructing our national contractors to request that providers, in compliance with our regulations at 42 CFR 431.107(b)(2), 431.970, and 457.720, submit medical records no later than 60 days after issuance of the contractor's letter requesting such records. This will provide additional time for the State and contractor to analyze and resolve discrepancies.

4. State Input into the Program

Comment: One commenter disagreed with CMS' statement that States have been active participants in the PERM regulatory process. The commenter stated that CMS has not provided an acceptable forum for State participation in the development of PERM regulation, and that only two States were involved in meetings with CMS during the development of the regulation. In addition, the commenter indicated that CMS has not been present on three all-State calls regarding PERM regulation, and that when CMS is present on calls, CMS does not provide substantive responses to questions and points of clarification from the States. The commenter concluded that States cannot make reasonable comments and suggestions when CMS does not provide States with sufficient information.

Response: The two States participated in the eligibility workgroup; they did not participate in developing the entire PERM regulation. Consistent with the rulemaking process, we have provided a vehicle by which we review all timely public comments submitted to us. Through this process, we have received valuable assistance in developing an error rate measurement procedure that we believe is both sensitive to the burdens that States must bear in meeting their responsibilities, as well as one that allows us to uphold the duties that we must carry out to be in compliance with the IPIA.

B. Methodology

Comment: Commenters stated that CMS should provide a detailed timeline for the PERM sampling year for claim and eligibility reviews, so that States would understand the schedule and deadlines. They indicated that this timeline should identify all three contractor activities and expected State responsibilities (for example, claim delivery and sampling schedule dates and required State documentation due dates needed by contractors to comply with CMS contract deadlines). In addition, the commenters noted that States have suggested that, for each PERM State being reviewed, the contractors should prepare monthly project planning documents to CMS and the States that would explain delays, barriers, or other issues that have arisen and the contractor's plans to resolve any problem areas.

Response: We provided an overall timeline of the measurement process in the August 28, 2006 interim final rule (using the FY 2006 Medicaid FFS measurement as an example) to identify when States should submit needed information. We have included the timeline again in this final rule (see ''Example of the PERM Production Cycle: FY 2006'' illustration) for the reader's convenience. In addition, we have held kick-off calls, State-specific calls, component review calls, and provided instructions to States selected for the FY 2006 and FY 2007 measurements, so States would understand the schedule and deadlines for the FFS and managed care claims data submission. We intend to provide the same guidance to States selected for the FY 2008 and FY 2009 measurements. The timeline for the eligibility measurement is attached to the eligibility instructions, which can be found along with the claims submission instructions, on the CMS PERM Web site at *http://www.cms.hhs.gov/PERM*.

Sampling

1. Exclusions From the Claims Universe

Denied Claims

Comment: Two commenters suggested that CMS remove denied claims as a review stratum. The commenters stated that there is an increased burden on States to produce a list of adjudicated denied claims and track re-billings of denied claims. The commenters also noted that there is difficulty in determining the sample size based on dollar value when the value of the denied claim is zero. The commenters recommended convening a workgroup to determine a methodology to measure errors in denied claims.

Response: Denied claims could be underpayments, and IPIA requires the inclusion of underpayments in our measurement. We believe it is as important to know when claims and eligibility have been wrongfully denied as when they have been wrongfully paid and approved. Furthermore, the sample size is determined by our statistical contractor, not the States. Finally, the methodology to measure errors in denied claims was developed by CMS and States during PAM/PERM pilots. Therefore, we are not adopting the suggestion to convene a workgroup to revisit this matter.

2. Sampling Issues

Comment: A commenter noted that the PERM stratification requirements are complex and would likely pose a challenge for its systems.

Response: We agree that stratifying Medicaid FFS claims has posed challenges for States. Many States measured in FY 2006 had difficulties stratifying the claims. Therefore, we are revising the requirement at § 431.970(a)(1) to remove the stratification of Medicaid and SCHIP FFS claims by service requirement. This approach will further reduce State burden since States would need only to submit the universe data. We believe we can achieve greater sampling efficiency by stratifying the FFS claims by dollar value rather than by service. The Federal contractor will stratify the claims by dollar value.

Comment: A commenter stated that CMS did not provide a rationale for the following statement in the August 28, 2006 interim final rule: ''We did not adopt the recommendation to select a nationwide sample because we believed that it was not the best overall method to meet the requirements of the IPIA and OMB guidance. There is no national sampling framework for SCHIP claims * * *'' The commenter maintained that the absence of a national sample framework for SCHIP does not mean that one could not or should not exist.

Response: We do not believe a national sample is the best method to achieve IPIA compliance. The Medicaid and SCHIP programs are State-administered, and as such, we think it is necessary for States to participate in part of the measurement process. We considered the suggestions made by commenters on the past interim final rules and determined that we would not adopt this recommendation.

Comment: A commenter asked whether the universe of claims includes pharmacy, mental health, and substance abuse claims.

Response: Yes, pharmacy, mental health, and substance abuse claims are included in the universe of claims.

Comment: Since the annual sample size is 1,000 FFS claims per State per program, a commenter stated that the State's SCHIP program will likely be disproportionately oversampled, since its State represents only approximately 10 percent of the total United States population.

Response: From a sampling perspective, there is generally no difference between a small and large population. Specifically, a property of sampling is that, once the population size exceeds about 10,000, the population can be treated as if it were an infinite population. In other words, statistically speaking, beyond a universe of about 10,000, population differences do not have a significant effect on sample size.

Comment: A commenter asked CMS to clarify each sample size and methodology for each area of the PERM project. The commenter stated that in all correspondence released by CMS to the States, the sample sizes and methodologies have varied, which has made it difficult for States to determine what is expected from them.

Response: PERM measures three components in Medicaid and three components in SCHIP: FFS, managed care, and eligibility. For FY 2006, the FFS sample size is 1,000 claims annually per program. These claims are subject to data processing and medical reviews by our contractor. For FY 2006, the managed care sample is 500 claims annually per program. These claims are subject to data processing review only by our contractor. For FY 2006, the eligibility sample size is 504 active cases and 204 negative cases (not claims). Reviews to verify eligibility are done by the States. Future sample sizes are subject to change as necessary depending on such factors as lessons learned or other situations impacting the timely and accurate error rate measurement.

Comment: Commenters asked when FY 2007 States could expect to receive additional information regarding the data elements that would be required for data submission.

Response: The statistical contractor sends instructions out to each State 45 days before the beginning of each fiscal year.

3. Medical Records Collection

Comment: A commenter asked if it was the State's responsibility to pursue information identifying which providers have not submitted requested medical records and whether the documentation/database contractor would provide this information to the State.

Response: The documentation/database contractor will request the medical records directly from providers for the FFS medical reviews. The contractor will follow-up with providers who have not submitted medical records. The contractor will notify the State of providers who have not submitted medical records. The State can opt to follow-up with these providers.

Comment: A commenter stated that, when the documentation/database contractor receives the medical records from the provider, it is imperative that the contractor immediately review the records for completeness and appropriateness of documentation. The commenter stated that the review should not be delayed until the medical review occurs because such delay increases the likelihood of a claim found in error.

Response: The DDC is responsible only for the collection of medical records and does not have the clinical expertise to determine the completeness of these records. However, the review contractor (who conducts the medical reviews) will notify the DDC if additional information is needed during the medical review, and the DDC will follow-up with the provider to obtain the specific information needed. Insufficient documentation errors are cited when the provider does not respond to the request for additional information or does not provide the additional information within 14 days of the request.

Comment: A commenter stated that our assurances related to the receipt of documentation before considering an error for lack of documentation were insufficient. According to the commenter, it is unreasonable to suggest that providers will respond timely to three written and oral requests during a 90-day time period. The commenter believed the documentation/database contractor should be required to obtain documentation throughout the entire review year.

Response: Our experience has shown that our provider response rate to requests for medical records is excellent, and that most providers submit records within 30 days of the original request. Therefore, we do not believe that the timeframe should be extended to include the entire review year and are not adopting this recommendation. In fact, given that the provider response rate is good and considering States' concerns with the 90-day timeframe impeding on the difference resolution process, we are considering reducing the timeframe, for example, to no later than 60 days from the date of the letter sent by the contractor requesting the medical records. If we decide this is worthwhile, we will issue a policy instruction to that effect.

Comment: A commenter stated that, since the documentation/database contractor will request medical records for the PERM program from a provider, CMS should consider methods to minimize the duplication of efforts since the State will have already received documentation from the provider.

Response: We agree that duplication of effort should be minimized wherever possible as long as the documentation is complete, comprehensive, and timely.

4. Adjustments to Claims

Comment: A commenter requested clarification regarding whether the 60-day adjustment timeframe pertains to managed care claims or whether it only applies to FFS claims.

Response: The 60-day adjustment timeframe pertains to both FFS and managed care claims. Adjustments made within 60 days of the original paid date will be included in the review process, which will consider the net amount paid (original paid amount with additions and subtractions due to adjustments that occurred within 60 days) in calculating the error rate.

States will submit adjustments for managed care payments selected in the random sample each quarter. These may include retroactive rate changes, rate cell assignment corrections, and takebacks for beneficiaries who lost eligibility.

Note that, while States may have policies that allow adjustments to be made more than 60 days after the original paid date, only the adjustments made within 60 days are considered for PERM purposes.

Comment: Several commenters expressed concern that § 431.970(a)(8) requires States to make adjustments to managed care capitation claims within 60 days of the adjudication date. The commenters maintained that States needed a longer timeframe to reconcile and adjust payments before the payments were classified as errors. One commenter observed that its SCHIP program has a reconciliation process in place that makes positive and negative adjustments to capitation payments to health plans on a retroactive basis; this process takes longer than 60 days. Some other commenters asserted that adopting a 60-day window for adjustments is contrary to the time periods now allowed in many States. One of the commenters recommended that CMS extend the adjustment timeframe to a minimum of 4 months.

Response: We responded to this comment in the August 28, 2006 interim final rule (70 FR 58260). We understand the commenter's concern; however, States have varying timeframes in which claims are adjusted, and we cannot extend the timeframe in a manner that would accommodate all States' practices. We noted in the August 28, 2006 interim final rule that the 60-day timeframe was agreed upon by States and CMS during the development of the review methodology under the PAM pilot projects as a reasonable timeframe. The 60-day timeframe allows for claims adjustments while maintaining a timeline that also allows for completing the reviews and computing and reporting the error rates in time for inclusion in the PAR.

If we extend the timeframe to a point beyond 60 days, we cannot be assured that the error rate measurement process will be completed in time to report the error rate. Accordingly, we are not adopting this recommendation.

Comment: A commenter stated that a bottom-line error rate must net overpayments and underpayments as already required by the HHS Office of Inspector General Corporate Integrity Agreements (*http://oig.hhs.gov/fraud/cia/docs/ciafaq1.html*).

Response: OMB guidance M–06–23, published on August 10, 2006, states that ''incorrect amounts are overpayments and underpayments (including inappropriate denials or payment of services).'' OMB guidance further directs that the estimate of improper payments is a gross total of both over and under payments. The OIG guidance that the commenter refers to is for a different purpose and does not apply to PERM.

Comment: If a claim is sampled that is a reversal of a prior claim, a commenter asked whether States would need to provide the original claim, which may have been outside the timeframe.

Response: The State will sample original claims only because no stand alone adjustments to claims are included in the universe. In other words, the State will sample original claims only and make any necessary adjustments within 60 days of the paid date for the claims after the sample is selected. These consolidated and adjusted claims would then be reviewed to determine if they were correctly paid.

Comment: A commenter asked whether adjustments to claims made within 60 days from the adjudication dates for the original claims or line items should be provided for the universe, or just for the selected sample.

Response: Adjustments should be provided for the selected sample only.

5. Medical and Data Processing Reviews

a. Methodology

Comment: A commenter recommended separating out claims for residential care services within the overall estimate of the State payment error rate, and suggested that CMS perform a quantitative and qualitative analysis to determine the underlying reasons for the payment errors in this category through surveys. CMS could then utilize the data to correct the errors by giving States and providers additional training where needed.

Response: Although we appreciate the commenter's recommendation, we are not adopting it. States are responsible for performing error rate analyses and for taking appropriate corrective action(s). The requirements for the PERM program do not preclude a State from independently evaluating any area within its Medicaid or SCHIP program that may trigger a concern or may be vulnerable to payment errors. In addition, it does not prevent a State from taking appropriate corrective action.

b. Medical Reviews

Comment: A commenter suggested that CMS should allow findings of ''undetermined'' for the medical claims reviews as is permitted for the eligibility reviews. The commenter believed that failure to recognize an ''undetermined'' result due to missing or insufficient documentation to support the medical reviews of FFS claims could produce artificially inflated payment error rates.

Response: Requirements to document eligibility can vary by State. However, all medical records should contain documentation to support services rendered. We believe that claims should not be considered correctly paid when documentation is missing to support the payment or does not justify the payment. Therefore, we are not adopting this recommendation.

Even though the total payment error rate will include documentation errors, as we stated in the August 28, 2006 interim final rule, the findings by our Federal contractors will distinguish errors due to missing documentation and insufficient documentation from other types of errors. As a result, States will be able to target corrective actions appropriately.

Comment: A commenter asked why claims will be counted in error if medical records cannot be provided.

Response: The FFS claims subject to medical review and lacking documentation to support the payments are considered errors because there is no evidence available to determine the appropriateness and medical necessity of the payments.

Comment: The August 28, 2006 interim final rule stated that ''[e]ach selected FFS claim will be subjected to a medical and data processing review.'' According to a commenter, this statement contradicts previous **Federal Register** information and PAM/PERM guidance on medical review of cross-

over claims. The commenter asks CMS to clarify the reported contradiction.

Response: The statement in the August 28, 2006 interim final rule was intended to provide a broad description of the PERM measurement process. In response to this comment, we are clarifying that cross-over claims (claims that are paid by both Medicare and Medicaid for services provided to Medicaid beneficiaries) are not subject to medical review.

c. Data Processing Reviews

Comment: A commenter asked how data processing reviews would be conducted if a SCHIP program did not process its own claims but instead processed claims through a contracted insurance company. The commenter asked whether the on-site data processing reviews would be performed at the insurance company. If not, the commenter asked how the reviews would be conducted.

Response: In instances when the SCHIP claims are processed through an insurance company, the review contractor most likely will conduct the reviews on-site at the insurance company.

d. Difference Resolution

Comment: A commenter recommended that the review contractor be required to provide the State with all documentation it received for each claim rather than partial documentation. This will allow the State to adequately evaluate the review contractor's decision.

Response: We believe the determination of the level of information needed should be made on a case-by-case basis. The RC or the DDC, or both, will provide the State with sufficient information on which it can decide if it disagrees with the error finding. We believe that it is inefficient for the RC to provide the State with all documentation on every claim and, therefore, we are not adopting this recommendation.

Comment: Several commenters noted that the difference resolution process needs more specific information to be adequately evaluated. They said that it could be rendered ineffective if it excluded review differences under an arbitrary amount (for example, $100) and did not include all the information received by the review contractor. One commenter recommended eliminating the $100 dollar threshold in the dispute resolution process.

Response: We have restricted when States can appeal an error finding in order to prevent *de minimis* disputes and to ensure that appeals to CMS address only those claims that are substantial enough to warrant re-consideration. Therefore, we are not adopting this recommendation. The $100 threshold for appeals at the CMS level also ensures that States receive timely decisions on their appeals, which could be jeopardized if the CMS appeals process was inundated with appeals by every State on error findings with a dollar value of less than $100. This threshold is similar to Medicare's Comprehensive Error Rate Testing program's threshold, which allows contractors to dispute one error finding per quarter.

As always, if a State is aggrieved by the contractor's adjudication or CMS' reconsideration, or wants to address errors with dollar values of less than $100, it can appeal to the Departmental Appeals Board.

Comment: A commenter noted that no time limits or restrictions were placed on the difference resolution process. A State may find it difficult to adequately review cases without sufficient time, especially if the review contractor is behind in its review process.

Response: We plan to release guidance to States on the difference resolution process through our review contractor, which will include timeframes to respond to and resolve differences.

Comment: A commenter stated that the difference resolution process is cited as a means to resolve disputes between States and the review contractor. However, according to the commenter, it is unclear whether all differences can be addressed in this process. The commenter also stated that the difference resolution process does not outline a process that addresses what happens if there are still unresolved differences between States and the review contractor in the final report.

Response: All differences in the review contractor's error findings other than errors due to no documentation are addressed in the difference resolution process. We also stated that errors due to insufficient documentation will be excluded from consideration because the difference resolution process is not intended to provide an extended timeframe for submitting additional documentation. However, we believe there are instances when States should be allowed to dispute errors attributed to insufficient documentation. Therefore, at a minimum, States will be able to dispute ''insufficient documentation'' errors when the State contends that: (1) There was documentation in the case record at the time of the medical review which was overlooked or misinterpreted by the reviewer; or (2) the State's written policy in effect at the time the service was rendered did not require the specific documentation that was the basis for the initial error finding. (This provision excludes policies developed after the fiscal year under review and made effective retroactive to the date of service.) Operational details regarding the difference resolution process will be issued via CMS guidelines.

Comment: Assuming that the number of unresolved differences between the State and the review contractor will be very small, a commenter suggested that the unresolved differences be considered ''undetermined'' and not be included in error rate calculations.

Response: The contractor's reviews findings will stand for purposes of the error rate calculations in cases where the differences remain unresolved after the conclusion of the difference resolution process. After the State's error rate has been calculated for purposes of PAR reporting, a State may request a new error rate calculation from the statistical contractor based on resolution of outstanding differences when the expected impact of the change in the error rate is at least 0.25 percentage points. The state can use this recalculated error rate for its own purposes (for example, corrective action, analysis, budgetary and resource planning).

Comment: A commenter noted that formal procedures for resolving differences have not been published. The commenter observed that States should be given the opportunity to review and comment on the procedures before implementation to ensure that concerns raised by States in previous public comments are addressed.

Response: We will release formal guidance for resolving differences in the difference resolution process through the review contractor. We will take the concerns expressed by the States into consideration as we implement the difference resolution process.

Comment: A commenter stated that an error of less than $100 on a claim should not be considered an error, since these findings cannot be considered in the difference resolution process.

Response: The $100 threshold applies only to appeals to CMS. Error findings with a dollar value of less than $100 could be considered in the difference resolution process.

6. Payment Error Rate and Reporting

Comment: A commenter noted that OMB guidance M–03–13 stated that OMB defines ''significant erroneous payments'' as ''annual erroneous payments in the program exceeding

both 2.5 percent of program payments and $10 million.'' The commenter asked whether erroneous payments in PERM that fail to meet either threshold at the State level would not be reported and not be repayable to the Federal government.

Response: The above noted definition of ''significant erroneous payments'' was provided by OMB to help agencies identify programs that are susceptible to significant erroneous or improper payments for purposes of measurement under the IPIA (in this case the Medicaid and SCHIP programs). The criteria set forth in the definition of ''significant erroneous payments'' is not relevant to computation of the error rate or recoveries. They are only applicable to the Federal agencies.

Comment: A commenter asked CMS to define the term ''agency'' as that term is used in § 431.974(a)(2) of the August 28, 2006 interim final rule. The commenter indicated that some States have divisions and departments rather than agencies.

Response: The term ''agency'' is defined in § 431.958 of the August 28, 2006 interim final rule. Under that provision, the term is defined as follows: ''*Agency* means, for purposes of the PERM eligibility reviews and this regulation, the agency that performs the Medicaid and SCHIP eligibility determinations under PERM and excludes the State agency as also defined in the regulation.'' Under this definition, the term ''agency'' could mean a State's division or department as well. We use the word ''agency'' as a general term recognizing that States have various words. Therefore, States should apply the term ''agency'' appropriately to mean division or department.

C. Expanded FY 2007 Error Rate Measurement

1. Eligibility

a. Cost and Burden

Comment: A commenter stated that the August 28, 2006 interim final rule is a complete reversal of the policy that was established in the October 5, 2005 interim final rule, in that the cost and burden of the PERM eligibility reviews is placed back on the States instead of having the reviews administered by a national contractor.

Response: The October 5, 2005 interim final rule stated that, based on comments and recommendations on the August 27, 2004 proposed rule, we adopted the recommendation to use a CMS Federal contractor to estimate medical and data processing error rates for Medicaid and SCHIP based on reviews of adjudicated FFS and managed care claims. In that same interim final rule, we also noted that we would convene a workgroup that would consider the best approach to measure improper payments based on eligibility errors within the confines of current law and with minimal budgetary impact. In addition, we pointed out that States could be required to conduct at least part of the eligibility reviews, and that any additional requirements placed on States would be detailed in a subsequent issuance. Therefore, the requirements in the August 28, 2006 interim final rule obligating States to conduct the eligibility reviews is consistent with the stated intent in the October 5, 2005 interim final rule and with the August 27, 2004 proposed rule that required States to conduct the eligibility reviews. Both of those rules alerted States that they would likely have to conduct at least part of the eligibility reviews. As a result, we disagree that there has been a policy reversal on this matter.

Comment: Several commenters stated that the eligibility review requirement placed a significant staffing and financial burden on States. The commenters believed that since they did not have the funding available for additional personnel, they would have to shift staff away from other programs to comply with this requirement.

Response: Based on our plan to rotate States for the PERM measurement, States can plan for the eligibility reviews. Each State also has the option of contracting out the eligibility reviews to an entity that is not directly participating in the State's eligibility and enrollment processes for either program, which may lessen State burden. In addition, it should be noted that, depending on a State's most recent error rate established under PERM, the sample size for subsequent eligibility reviews needed to produce a reliable error rate could be reduced in future years, thus further reducing cost and burden. We are also considering other means to minimize cost and burden related to the eligibility reviews. To that extent, we are providing in this final rule a provision to eliminate duplication of the negative case action reviews under both the PERM and Medicaid Eligibility Quality Control (MEQC) programs. We will provide in this final rule that, in a year a State conducts the negative case action reviews under PERM, these PERM reviews will be considered to meet the negative case action requirements under MEQC.

Comment: A commenter believed that the rule would require experienced caseworkers to move into reviewer positions and deplete field offices of eligibility determination resources and thereby impact error rates in all programs (that is, Medicaid, Food Stamps, and Temporary Assistance for Needy Families) and place States at high risk of future Federal Food and Nutrition Service sanctions.

Response: The rule does not require experienced case workers to conduct the reviews. Furthermore, the annual active case sample size in a State's initial year under PERM is 504 cases per program. This annual sample size results in a State reviewing 42 cases per month per program. The annual sample size could be reduced in subsequent years based on the State's most recently calculated eligibility error rate under PERM. Therefore, we do not believe States will need to commit significant resources to the reviews, particularly to the extent that other programs would be negatively impacted.

Comment: Some commenters believe that the time and expense to conduct the eligibility reviews for approximately 1,000 cases (500 per program) is underestimated. Commenters stated that, even at the underestimated 108,800 hours for collection activities and 19,960 hours to complete the Medicaid and SCHIP reviews, this burden will have a substantial impact on States, especially smaller States.

Response: We believe the amounts which we provided in the August 28, 2006 interim final rule accurately estimated the impact on States. However, these amounts are estimates and we agree that States may experience higher or lower costs during actual implementation. It should be noted that States are reimbursed at the Federal Administrative Match Rate for these activities. We are considering ways to reduce costs through minimizing duplication of effort in the PERM and MEQC reviews or through other means.

Comment: Based on its experience with MEQC and the PERM pilot, a commenter stated that the estimates of the August 28, 2006 interim final rule are understated; according to the commenter, the estimates do not take the expanded scope of PERM into consideration.

Response: We considered estimates for the FFS, managed care and eligibility measurements for both Medicaid and SCHIP in the August 28, 2006 interim final rule as well as in this final rule. Insofar as this can be deemed to be an expansion of PERM, we did take that into account. However, we would not necessarily agree with the commenter that the interim final rule represents an expanded scope. Indeed, our decision to use national contractors for much of the

PERM measurement represents a narrowing of our scope. We believe that our estimates are accurate.

Comment: A commenter stated that CMS should further revise eligibility cost and burden estimates to reflect the need to hire and train staff, travel allotments, and the complexity of certain reviews that will require additional time to complete.

Response: We included an additional 2,135 hours in our estimates for supporting functions like training, supervision, quality assurance and creation of review tools, etc. The total 10,055 hour estimate represents the burden to complete review findings to show the disposition of each case and includes all of the review supporting functions.

Comment: A commenter believed that the burden estimates that CMS provided in the August 28, 2006 interim final rule do not adequately reflect the burden that States must assume in the PERM review process. The commenter stated that CMS should consider that, although the PERM cycle is 23 months, different staff will be required to complete different phases of each process. The commenter noted that the same staff will not be used for the FFS component, managed care component, and eligibility component.

Response: We estimated cost and burden for each function of the PERM program as outlined in the interim final rule. We refer to section V., Collection of Information Requirements of the August 28, 2006 interim final rule (71 FR 51077). We considered the cost of the staff in each individual function. We do not believe that additional costs necessarily will result from different staff working on different functions. We believe this will vary from state to state. We continue to believe our estimates are correct.

Comment: A commenter suggested that if PERM reviews cannot be used to satisfy MEQC requirements, then States should be reimbursed in full for the eligibility functions.

Response: In the August 28, 2006 interim final rule, we noted that States selected to conduct eligibility reviews will be reimbursed for those activities at the applicable administrative Federal match under Medicaid and SCHIP.

Comment: A commenter maintained that States that are preparing for or in the process of implementing a new Medicaid Management Information System (MMIS) or eligibility system should be exempt from selection until the implementation of the system has been finalized. Otherwise, the commenter stated that resources will be stretched to the maximum.

Response: We notified States of their selection in the rotation through a State Health Official letter released to all States on November 18, 2005. Therefore, we believe that States are able to adequately plan for the PERM measurement process and are not adopting this recommendation.

Comment: A commenter believed that there will be an increased cost to and burden on States if they choose to hire a consultant to perform eligibility reviews (for example, States would have to coordinate efforts to provide documentation to the consultant and manage the consultant).

Response: Contracting out the eligibility reviews to an outside vendor is an optional decision for States. If a State believes this option would have a detrimental effect, it is not required to select it.

Comment: A commenter stated that States should be allowed to conduct reviews in accordance with their eligibility policies, to reduce time and expense. According to the commenter and to further illustrate this point, the commenter indicates that States should not be required to document verification of income and age if the State's eligibility policy accepts self-declaration.

Response: The PERM eligibility reviews provide for a State to verify eligibility according to the State's policies to determine if the case meets the eligibility criteria set by the State. These instructions were developed to allow States to use their own policies to the maximum extent possible while ensuring a consistent methodology nationwide. We released instructions for conducting eligibility reviews through an October 10, 2006 State Health Official letter. These instructions provide for the acceptance of self-declaration under certain circumstances. These instructions are posted on our CMS PERM Web site at *http://www.cms.hhs.gov/perm/downloads/2007EligibilityGuidance.pdf.* The accompanying State Health Official Letter is posted on our CMS PERM Web site at *http://www.cms.hhs.gov/perm/downloads/2007ParticipationLetter.pdf.*

Comment: A commenter asked if reviewers would be required to accept a State's standards and processes and not verify information using other sources not used by the State.

Response: The eligibility instructions address sufficient evidence of documentation and also refer to section 7269 of the State Medicaid Manual for listings of acceptable documentation to verify eligibility for PERM purposes. We would expect reviewers to verify eligibility under the PERM reviews using these sources in cases where documentation is missing from the case record or is outdated and likely to change regardless of whether a State uses these sources to verify eligibility for the Medicaid and SCHIP program. However, since these documents (birth certificate, driver's license, etc.) are commonly used as evidence of eligibility, we would expect a State would already be using these sources.

Comment: A commenter stated that staff time devoted to developing a corrective action plan and reporting error rates must be considered in the review costs.

Response: We have considered these factors in our estimates. In the August 28, 2006 interim final rule, we estimated the cost and burden on States to be up to 1,000 hours per State per program to develop a corrective action plan and 9,980 hours per State per program to conduct the eligibility reviews and report error rates.

Comment: A commenter stated that PERM places a disproportionate and excessive burden on SCHIP by applying the same requirements to both Medicaid and SCHIP. The commenter stated that SCHIP is a significantly smaller program covering far fewer individuals than Medicaid and with a fraction of the expenditures of Medicaid. However, the smallest SCHIP programs will be required to sample the same number of cases at an estimated cost of $532,000 per program, which represents a significant amount of money for many SCHIP programs.

Response: From a sampling perspective, there is generally no difference between a small and large population. Specifically, a property of sampling is that, once the population size exceeds about 10,000, the population can be treated as if it were an infinite population. In other words, statistically speaking, beyond a universe of about 10,000, population differences do not have a significant effect on sample size. We have provided in our eligibility instructions that, based on the finite population correction factor, States with a SCHIP or Medicaid population of 10,000 or less can use a smaller sample size. After a State establishes its baseline eligibility error rate, it can use that rate to determine the sample size for the next measurement year, which could be smaller. Therefore, we expect that the State would experience a savings in cost and burden due to the smaller sample size.

Comment: Several commenters expressed concern that the eligibility reviews will significantly impact the SCHIP program's 10 percent cap on

administrative expenditures. Their comments include:

• PERM costs should be separate, as it was not part of the consideration when the cap was created. The costs will exceed the estimated costs of $400,000 under the regulatory impact statement. However, references to the SCHIP program in the analysis and response to public comments stated that there will be no consideration of exempting PERM activities from this cap.

• The estimated cost of $532,000 per program will have a particularly significant impact on smaller States, States which are close to reaching the 10 percent cap on administrative expenses, and which may exhaust their SCHIP allotments in the year that they must conduct PERM reviews. A number of States could be forced to serve fewer children and cut back on other important administrative functions, such as outreach, application processing, and quality improvement because of the new PERM requirements.

• States may exceed their 10 percent administrative cap and violate Social Security Act Title XXI since CMS noted, in the August 28, 2006 interim rule, ''We are not considering exempting the costs of PERM-related activities from the 10 percent cap on SCHIP administrative expenditures.''

Response: Although we respect the commenters' concerns that the eligibility reviews will significantly impact the SCHIP program's 10 percent cap on administrative expenditures, as we stated in the August 28, 2006 interim final rule, we view PERM as part of the cost of administering the SCHIP program.

Comment: Several commenters stated that they must obtain additional funds for additional budgetary issues (that is, hire and train staff, purchase materials, and modify and develop systems) through their biennial legislature. However, without specific guidance and particulars on PERM eligibility reviews, the requests for additional funds cannot be developed. CMS should finalize the PERM regulations and give States time to develop internal procedures and structure or consider deferring implementation or stagger the measurement of the programs.

Response: Our guidance for the eligibility measurement was released on October 10, 2006 and is posted on our CMS PERM Web site. We agree that the States selected for the FY 2007 measurement needed additional time to prepare for the reviews, and we provided these States with a 3-month implementation period. We believe the States being measured in FY 2008 and FY 2009 will have ample time to prepare for the reviews.

b. Eligibility Workgroup

Comment: A commenter stated that CMS should not implement the PERM eligibility reviews for SCHIP in FY 2007 as proposed in the August 28, 2006 interim final rule. Instead, the commenter recommends that CMS should convene a workgroup composed of all stakeholders—including Federal officials, State SCHIP directors and children's advocates—in order to develop an alternative methodology tailored more appropriately to the SCHIP program.

Response: The eligibility workgroup, which included both a State and a Federal SCHIP representative, carefully considered the impact the eligibility reviews would have on the SCHIP program when it developed its review methodology. During the process, the workgroup tailored its methodology to the SCHIP program (to the extent possible) while it took steps to maintain the consistency and integrity of the review measurement. As a result, we have implemented the PERM eligibility reviews for SCHIP in FY 2007 as proposed in the August 28, 2006 interim final rule. We also felt it was important to maintain consistency between Medicaid and SCHIP reviews to the extent possible to reduce burden on States whose SCHIP programs are Medicaid-expansion.

Comment: A commenter asked why no SCHIP representatives were invited to participate on the eligibility workgroup to comment on the eligibility sample size.

Response: We had one State and one Federal SCHIP representative on the workgroup. The sample size was determined by statistical measures that assumed a 5 percent error rate, since there are no reliable Medicaid eligibility error rates for the majority of States and no SCHIP eligibility error rates exist on which we could use as a basis to determine sample size. We have provided for a modest population correction, which could potentially reduce the sample size necessary for States with small Medicaid or SCHIP populations.

Comment: A commenter indicated that there were many States that participated in the PAM and PERM pilot projects. The commenter asked how the two States that participated in the eligibility workgroup were selected, and whether these States participated in the pilot projects. In addition, the commenter asked CMS to provide a schedule and meeting minutes that were held in developing the eligibility review methodology.

Response: We convened an eligibility workgroup comprised of DHHS (including CMS and, in an advisory capacity, the Office of the Inspector General (OIG)), OMB, and representatives from New York and New Jersey, as selected by the American Public Health Services Association. We did not believe that their previous participation in the PAM/PERM pilots was necessary since the purpose of the workgroup was to establish a methodology for eligibility reviews based on a case sample. The eligibility reviews conducted in the PAM/PERM pilots were based on a claims sample. We also developed the methodology based on the workgroup's consideration of public comments and the examination of various approaches proposed in these comments.

c. Duplication of Effort

Comment: Many commenters noted that the interim final rule requires States to conduct two eligibility reviews—once for the MEQC program and once for the PERM program. Commenters responded as follows:

• One State noted that the August 28, 2006 interim final rule prohibiting PERM reviews from being substituted for MEQC reviews conflicts with the information collection request and supporting statement that indicated this substitution would be possible. States need a final decision in order to plan for adequate staffing.

• Another commenter wanted to know whether the PERM review could substitute as a MEQC pilot program. A number of commenters urged us to reconsider allowing the option of substituting PERM eligibility reviews for MEQC eligibility reviews since the requirements for States to conduct both MEQC and PERM eligibility reviews is duplicative, administratively burdensome, and, a poor use of resources. If States use PERM reviews to substitute for MEQC reviews, the commenters asked whether the PERM review would preclude imposition of financial penalties that would otherwise apply to the standard MEQC program.

Response: The notice of information collection requirements, published in the **Federal Register** for public comment on July 22, 2005 (70 FR 42324), was in draft form for comment. We republished the final notice in the **Federal Register** on September 1, 2006 (71 FR 52079). We have determined that the PERM program is not intended to supplant other programs, such as the MEQC program. However, in an attempt to reduce duplication of effort, we have

decided that the negative cases reviews under PERM can be used to fulfill the negative case review requirements under MEQC at § 431.812 for the fiscal year a State is being measured under PERM. We will amend the MEQC regulations accordingly. Finally, any recoveries due to Medicaid eligibility errors that fall within the scope of the MEQC program would be recouped through the MEQC program at section 1903(u) of the Act and would be subject to the 3 percent disallowance. SCHIP improper payments identified through the PERM eligibility reviews are subject to recovery under section 2105(e) of the Social Security Act.

Comment: A commenter asked if States are allowed to substitute PERM reviews for MEQC reviews, whether MEQC staff could conduct SCHIP eligibility reviews in lieu of MEQC reviews, or whether States with SCHIP programs that are not Medicaid expansion programs would be required to hire separate staff for the SCHIP reviews.

Response: As noted above, States cannot substitute PERM reviews for the MEQC active case reviews. Furthermore, we wish to clarify that under PERM, SCHIP eligibility reviews include all cases where benefits are paid by title XXI funds, which would include Medicaid expansion cases. We are not requiring SCHIP programs to hire separate staff to conduct eligibility reviews under PERM; certain commenters have made this decision on their own. As previously stated, each State must determine and ensure that the agency and personnel that develop, direct, implement, and evaluate the PERM eligibility reviews and associated activities are functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and SCHIP policy and operations.

Comment: A commenter asserted that the regulations conflict on whether MEQC reviews can be substituted for PERM reviews. The commenter noted that CMS presently mandates MEQC reviews. According to the commenter, States would experience a duplication of effort since these reviews would not be eliminated or replaced through the proposed regulation. The commenter stated that there are distinct and notable differences between the PERM and MEQC reviews.

Response: We cannot waive the MEQC statutory requirements and have determined that the PERM eligibility reviews will not be used to meet the MEQC requirements. We agree there are distinct and notable differences between the PERM and MEQC reviews. However, the PERM reviews were developed in response to the IPIA and were never intended to mirror MEQC reviews. Therefore, we do not believe the regulations conflict.

Comment: A commenter stated that consideration has not been given to waive PERM review requirements for States that have efforts underway to measure improper payments.

Response: PERM enables us to comply with the reporting requirements under IPIA. It is not intended to replace existing efforts by States independently to measure improper payments.

Comment: Several commenters recommended that regulatory changes be made to allow PERM reviews to substitute for MEQC reviews in years when States are selected for the PERM program and revert back to MEQC reviews in non-PERM years. The commenters stated that CMS has the authority to change the PERM methodology.

Response: We have previously stated that the PERM eligibility reviews were developed to comply with the IPIA and are not intended to substitute for other program initiatives. Therefore, we are not adopting this recommendation.

Comment: Instead of conducting simultaneous reviews for PERM and MEQC, one commenter made the following recommendations: (1) Waive the MEQC requirements for the PERM year; (2) during PERM measurement years, allow States to use the PERM quarterly samples for eligibility reviews; and (3) eliminate the stratification for eligibility and reduce the number of months data are collected to manage the aggregate sample size at the State level.

Response: As indicated earlier, we cannot waive MEQC since the program is a statutory mandate. In addition, the PERM quarterly FFS and managed care samples, which during the PAM/PERM pilots were the basis for the eligibility reviews, are claims-based. We determined through the PAM/PERM pilots that a claims-based sample was not conducive to eligibility reviews because the time lag between when the claim is paid and when the service was received (when eligibility is verified) could be up to two years. This time lag not only would make verifying eligibility expensive and difficult but also would not produce current information on which to base corrective actions. Finally, stratifying active cases ensures that the number of recently determined cases (applications and redeterminations) will be large. If the active cases were drawn randomly without stratification, most of the determinations would be months old, which would make verifying eligibility as of the State's last action difficult and expensive. The data are collected evenly over the entire year, rather than being concentrated in one or two months, to reduce the potential for biasing the eligibility error rate if there is seasonality in the errors.

Comment: A commenter pointed out that CMS has stated that it is ''considering'' methods to minimize duplication of efforts in eligibility reviews. However, States speculate this will not be addressed.

Response: We have identified one area in which we can reduce duplication of effort. In this final rule, we will amend the MEQC regulations at § 431.812 to provide that a State can use the PERM negative case action reviews to meet the MEQC requirements for negative case action reviews in the Fiscal Year a State is being measured under PERM.

d. SCHIP Concerns

Comment: A commenter stated that SCHIP programs are charged with examining the quality of services rendered through their programs and clearly demonstrating their ability to provide preventive services to the child population. The commenter indicated that the majority of SCHIP programs report this information in their annual reports to CMS. The commenter asked whether ''the model and leading edge'' for which SCHIP has become known will be curtailed or stopped as a result the PERM regulations. The commenter stated that, in 2007, it could spend 15.9 percent of its entire administrative budget on PERM-related activities. The commenter asked what would be lost if these activities forced States to exceed their financial cap on administrative federal funds.

Response: The PERM activities are not intended to curtail or impede other activities for SCHIP. Since States know when they will be selected to participate in PERM, we expect that States would be able to budget for the reviews in a manner that would not impede these other activities.

e. Administration of Eligibility Reviews

Comment: A commenter asked whether a SCHIP stand-alone State office would be excluded from performing eligibility reviews, even though it does not determine eligibility but does develop policies and procedures.

Response: We believe that an office that develops program policies and procedures and also conducts the PERM eligibility reviews most likely would not provide independence to the reviews and should be excluded. However, we

also believe that the States should have the flexibility to determine which agency performs the reviews based on our clarification of the requirement for a separate and independent agency (as provided on the CMS PERM Web site in the Q & A Section at *http://www.cms.hhs.gov/PERM/Downloads/PERMQ&A072507.pdf*).

Comment: Several commenters asked whether a State could contract with an appropriate vendor to conduct eligibility reviews or whether only another State agency could conduct the reviews.

Response: Yes, the State can contract with a vendor, as long as the contracting entity did not participate in the State's eligibility determinations and enrollment activities and does not report to and is not overseen by the State agency responsible for eligibility, policies and operations.

Comment: Several commenters did not support the requirement that PERM eligibility reviews must be functionally and physically separate and independent from the State agency responsible for Medicaid and SCHIP policy and operations, including eligibility determinations. They recommended that we remove the ''separate and independent'' requirement. One commenter believed it was administratively cumbersome and unnecessary to place the PERM reviews outside of its Department of Health and Human Services particularly because shifting responsibility to conduct eligibility reviews to agencies that do not have expertise in Medicaid and SCHIP will result in incorrect findings and misapplication of Federal policy. According to the commenters, the ''separate and independent'' requirement could also limit State flexibility and unnecessarily increase the complexity and cost of PERM administration. The commenters also believed that States would have difficulty securing contracts without sufficient time.

Response: We agree that the States selected for the FY 2007 measurement might not have adequate time to secure contracts, and we apologize for the short notice of this option. However, all States have adequate time to secure contracts for future years if they wish to elect this option.

The intent of the requirement to have the agency responsible for the PERM eligibility reviews be physically and functionally separate from the State agency responsible for program policies, operations, and eligibility determinations is to ensure a level of independence and integrity in the review process. We do not believe that having these staff commingled or having one supervisor immediately responsible for both functions provides this assurance. Therefore, we are not adopting this recommendation. However, we are clarifying in this response that this requirement does not preclude the State from placing the agency responsible for the PERM eligibility reviews within the same single State agency or umbrella agency as the State agency responsible for program eligibility policies and determinations, provided that both agencies do not report to the same immediate supervisor—for example, first-line manager, Unit, Branch or Division Director. Our standard is that the agency responsible for the PERM eligibility measurement report to upper management that does not have direct responsibility for program policies, operations and eligibility determinations. We also strongly recommend that this agency also have a direct reporting line to the head of the single State agency or other top management—that is, the State Medicaid Director, State SCHIP Director, and Commissioner or equivalent thereof. States should arrange the placement of the PERM eligibility measurement to achieve this standard to the extent possible.

Comment: Several commenters believed that State employees who were not physically and functionally separate from the State agency responsible for eligibility policy and operations were currently performing MEQC activities. The commenters stated that there was no evidence to support that the current organizational structure presented a conflict of interest for MEQC. In addition, they maintained that there was no indication that the program integrity process could be compromised by the location of employees conducting the reviews. The commenters believed that placing restrictions on State resources used to comply with PERM eligibility requirements would increase the complexity and cost of administration.

Response: It is important to note that the MEQC program and the PERM eligibility measurement are separate and distinct requirements and should not be compared. However, regarding the placement of MEQC staff, the State Medicaid Manual, Part 7, section 7005 provides guidance on administering the MEQC program and specifically states that MEQC staff should report to top management, and that the State should ''separate staff physically and functionally from operating units and policy units.'' The Manual states that any other organizational structure requires CMS regional office concurrence. In addition, section 7218 of the Manual further discusses the independence of the MEQC review. The similar requirement for the PERM eligibility reviews was adopted from a recommendation made through public comment on the October 5, 2005 interim final rule because we believe it helps to ensure the integrity of the reviews. Therefore, we believe the PERM requirement is appropriate and, for those comparing the programs, is consistent with the requirement for the independence of the MEQC reviews as expressly stated in the State Medicaid Manual.

Comment: A commenter stated that it contacted CMS on whether its structure would meet the regulatory requirement to have the agency conducting the PERM eligibility reviews be functionally and physically separate from the State agency responsible for Medicaid and SCHIP eligibility policy, operations, and determinations. This commenter explained that its Program Integrity division, which conducts QC reviews, is within the Medicaid Agency and is separate and independent of its Eligibility Division that is responsible for setting policy and determining eligibility. The commenter requested a clear and definitive answer of whether or not its Program Integrity Unit can conduct the eligibility review.

Response: Section 431.974 in the August 28, 2006 interim final rule outlines the basic elements of Medicaid and SCHIP eligibility reviews, including the parameters for determining which agency can perform the reviews. We provided further interpretation of these provisions in eligibility instructions through an October 10, 2006 State Health Official Letter and the CMS PERM Web site at *http://www.cms.hhs.gov/PERM*.

We are also clarifying this specific requirement in this final rule. As a result, we believe that States should have sufficient guidance on which to determine which agency within the State's organization should appropriately conduct the reviews. We are not approving each State's determination, as the commenter urges us to do in this case, that the agency assigned to perform the reviews or that the State's organizational structure meets the regulatory requirement in § 431.974(2) of the August 28, 2006 interim final rule. That determination is reserved for each State to make. In this particular situation presented by the commenter, although we do not know the State's organizational structure, based on the description we believe that, as long as the Program Integrity Unit does not report to the same

immediate supervisor as the Eligibility Division, and reports to upper management and, preferably, has direct reporting to the State Medicaid or SCHIP Director or other top management, the placement of the PERM eligibility reviews within the Program Integrity Unit appears reasonable.

Comment: Two commenters stated that the regulation needs further clarification so that States can determine which unit or agency can perform the PERM reviews.

Response: To assist States to determine which agency can perform the PERM eligibility reviews, States should determine:

- Whether the PERM review (eligibility and payment) staff would be physically separate from the program eligibility review staff, for example, located on a separate floor in a building or located in a separate building and not commingled in any way.
- Whether the eligibility review agency would be functionally separate and independent from the agency responsible for eligibility determinations, policy and operations. The PERM unit should not report to the same agency head, first line supervisor, Division Director or other immediate supervisor. There should be at least one level of supervision between the agencies and upper management. For example, each agency would report to its own immediate supervisor; both supervisors would then report to upper management. We recommend that the PERM agency also have a direct reporting line to top management, for example, State Medicaid Director or Deputy Commissioner.

Comment: A commenter was concerned with the agency conducting the PERM reviews being a part of the same Medicaid office or division, not the same State agency.

Response: We have clarified in this final rule that the agency conducting the PERM reviews can be housed within the same State agency containing the program office or division. However, this agency should not be housed in the same office or division as the State agency responsible for eligibility to the extent that both agencies are commingled and report to the same immediate supervisor, for example, a first-line manager or Division Director, because we do not believe this placement would support the independence of the reviews and the findings.

Comment: A commenter noted that the requirement that the agency conducting the PERM eligibility reviews be functionally and physically separate from the State agency responsible for Medicaid and SCHIP policy operations poses a considerable hardship on the State and requires creating a completely new entity or organizational structure within the State. CMS should allow States to use the agency that is most familiar with eligibility requirements to conduct the PERM eligibility reviews.

Response: We are not requiring States to create a new entity or organizational structure. Rather, we expect States to place the PERM eligibility reviews within the States' organizational structures in a manner that provides integrity and independence to the reviews and in accordance with our clarifications provided above.

Comment: A commenter stated that the functional and physical separation requirement contradicts CMS' assertion that having the State conduct the eligibility review will reduce or eliminate the demand that would otherwise be placed on State staff to educate a contractor about eligibility issues. The current staff will have to take time to provide technical assistance to the PERM audit staff that the State would need to establish under this requirement, thus increasing the cost of conducting these reviews.

Response: Providing technical assistance to State staff rather than the Federal contractor would not necessarily increase the cost of conducting the reviews. State policies by which reviews are conducted are already in-house. In addition, States can determine the appropriate agency to conduct the reviews or contract out this function, either of which may not require extensive technical assistance.

Comment: A commenter asked whether it is CMS' intent that States hire staff dedicated solely to PERM.

Response: No States should decide which staff are appropriate to implement the eligibility methodology under PERM within the parameters required by this regulation.

Comment: A commenter asked if States choose to hire staff for the PERM project in years they are measured, what functions would this staff have during the off years when the State is not being measured.

Response: It is not our intent to require States to hire staff dedicated solely to PERM. However, States have the discretion to hire such staff if they wish to do so.

Comment: A commenter stated that the requirement seems to contradict a response to a comment made at a conference regarding the difficulty of staffing for PERM when staff is only needed every three years. The CMS oral response suggested using eligibility reviewers on an interim basis between PERM selection years to enhance Medicaid or SCHIP program integrity activities, which suggests that CMS would want States to use these employees to staff ongoing operations in the agency.

Response: We responded to a similar comment in the August 28, 2006 interim final rule in which we stated that, with respect to eligibility reviews, staff for PERM would be needed longer than one year because the process to measure one fiscal year takes approximately 23 months. In the time period before a State's next PERM measurement activities (approximately 13 months), we suggested, in response to the oral comment, that a State could use the staff for other quality assurance initiatives, such as enhancing its MEQC and SCHIP program integrity activities. We were not suggesting that PERM employees staff ongoing agency operations. This response, as well as the oral response at the conference, was intended to clarify that staffing is not necessarily needed for only 1 year, there are other areas where staff could be used when not needed for PERM activities. However, we do not necessarily expect States to hire staff devoted to PERM. We have provided States the option to contract these reviews out to an entity not actively involved with the State's eligibility and enrollment activities.

Comment: A commenter asked if CMS will allow MEQC staff to perform the PERM review to satisfy the requirement for the MEQC program.

Response: No. States that would use the MEQC staff to perform the PERM review would necessarily need to reduce MEQC activities or scope of reviews to divert MEQC staff to conduct the PERM reviews.

Comment: A commenter recommended allowing States the option to use MEQC staff to perform PERM eligibility reviews.

Response: We are not adopting this recommendation because we do not agree that the current level of effort committed to the MEQC program should be reduced to accommodate the PERM eligibility reviews.

Comment: A commenter asserted that this provision would require States to contract out the eligibility reviews, because no other State agency would have the expertise to perform the reviews. Contracting out eligibility reviews would result in duplication of organization and add significantly more costs.

Response: We have given States the discretion to organize their eligibility review staff as they see fit within specific parameters. Our clarification of

this provision provides States flexibility to place the PERM reviews in the appropriate agency as well as contracting with an external organization.

Comment: Several commenters asked if it was CMS' intent for the State agency to contract with an outside vendor to conduct the PERM eligibility reviews. If so, then the eligibility component of PERM should be delayed to allow time for the States to develop and implement contractual arrangements.

Response: It was not our intent to require a State agency to contract with an outside vendor to conduct the PERM eligibilities reviews. However, this approach is an option a State may wish to pursue.

f. Review Methodology

Comment: A commenter stated that the interim final rule provided little specific guidance as to the processes and methodologies that should be employed for conducting the eligibility reviews, thereby making it difficult to develop a sampling plan and determine complete staffing and financial needs to conduct the reviews.

Response: We released detailed eligibility review instructions to the States being measured in FY 2007 through an October 10, 2006 State Health Official Letter. These instructions are posted on our CMS PERM Web site at *http://www.cms.hhs.gov/perm/downloads/2007EligibilityGuidance.pdf.* The State Health Official Letter is posted on our CMS PERM Web site at *http://www.cms.hhs.gov/perm/downloads/2007ParticipationLetter.pdf.* States may access these Web sites to obtain this information.

Comment: Several commenters stated that the regulations do not contain any specifics on conducting the eligibility reviews. Their comments include:

- CMS is preparing more detailed instruction about PERM without public comment or input. CMS should make the policy for eligibility reviews available to all States, not just States selected for the FY 2007 reviews, as soon as it is available to allow sufficient time to set up procedures and train staff accordingly.
- CMS should clarify in its instructions that PERM reviewers are not required to consult information sources other than those that the State itself had to consult in making the underlying determination. Therefore, if a State's verification and other procedural requirements comply with Federal law and the eligibility caseworker complied with State procedures, PERM reviewers should not be required to independently verify information upon which the State's determination was made. Otherwise, the estimated errors will be overstated, which may compel States to implement more restrictive procedural requirements and thereby resurrect barriers to the enrollment of eligible individuals.

Response: We announced in the October 5, 2005 interim final rule our intentions to establish an eligibility workgroup to make recommendations on the best approach for reviewing Medicaid and SCHIP eligibility within the confines of current statute, with minimal impact on both States and on additional discretionary funding. We convened an eligibility workgroup, which included representatives from two States, and we considered public comments. In the August 28, 2006 interim final rule, we published our eligibility review methodology and invited further public comment. In addition, as noted, we have made our eligibility review instructions available to all States, not just to States that were selected for FY 2007 reviews, on our CMS PERM Web site at *http://www.cms.hhs.gov/PERM.*

Finally, we do not agree with the commenter's statement that, if a State's verification and other procedural requirements comply with Federal law and the eligibility caseworker complied with State procedures, PERM reviewers should not be required independently to verify information upon which the State's determination was made. The purpose of the eligibility review is to verify that the individual is actually eligible for the program, not to verify that the State's policies comply with Federal law or to determine that the caseworker conducted the review appropriately. Therefore, in some instances, the PERM review may necessarily go beyond the State's procedures and caseworker's actions to verify eligibility.

Comment: Some commenters recommended postponing the commencement of the eligibility review component. The comments included:

- States cannot develop sampling plans that meet CMS expectations due to the uncertainty of expectations.
- States must follow budgetary processes to get necessary State agency or contract staff and may not have adequate time to arrange funding.
- States need additional guidance as to the sampling processes and methodologies for reviewing cases, as well as time to arrange the necessary infrastructure and funding needed to support the eligibility review.

Response: In the October 5, 2005 interim final rule, we announced the States selected for Medicaid FFS, managed care, and eligibility reviews in FY 2006, FY 2007 and FY 2008, so that the States would know in advance in which year they will be measured under PERM. We also stated in that rule we expected the determination of the eligibility error rate would require State participation, and that we planned to have the eligibility reviews commence in FY 2007. Finally, we notified all States in an August 30, 2006 State Health Official Letter that States will conduct the eligibility reviews, and we met with States at two conferences held in September 2006 to provide additional information. Therefore, we believe States had preliminary information to help prepare for conducting the required eligibility reviews, which were followed up with detailed written eligibility review instructions released on October 10, 2006. Finally, the FY 2007 States, which had less advance notice than the remaining States, are already working successfully with our contractors in developing their sampling plans. Therefore, we are not adopting the recommendation to delay implementing the eligibility reviews.

Comment: A commenter suggested that CMS clarify that PERM reviews will not immediately encompass State compliance with significant changes in Federal rules or policies until States have had a reasonable opportunity to implement the new rules.

Response: The PERM reviews will follow State policies and procedures so long as they comply with Federal requirements, using the effective dates of the Federal requirements and CMS policies regarding State implementation. The PERM reviews are not intended to hold States harmless in matters of non-compliance. Therefore, we are not adopting this recommendation.

Comment: A commenter recommended that the FY 2007 PERM reviews should not encompass the Medicaid citizenship documentation requirements, which went into effect July 1, 2006 under the Deficit Reduction Act of 2005. The commenter believed that since CMS policy in implementing the new documentation requirements has not been completely settled in a final rule, the uncertain nature of the new rules will make it difficult for States to be in full compliance in FY 2007.

Response: The PERM review of citizenship for Medicaid will follow CMS policy set out in a final regulation with comment published on July 12, 2006 (71 FR 39214) and any subsequent regulatory and policy guidance.

For purposes of the PERM reviews, if documentation is missing from the file that should have been obtained under this final rule with comment, the reviewer would need to make a reasonable attempt to obtain evidence of citizenship either independently or through beneficiary contact.

Comment: A commenter noted that the PERM eligibility sampling and stratification requirements will require complex system coding and is a radical departure from traditional MEQC sampling techniques. The commenter recommended that CMS consider suspending MEQC reviews during the PERM review year.

Response: The PERM eligibility reviews are independent of MEQC, and their methodology should not be compared to MEQC. As stated in the August 28, 2006 interim final rule, the PERM program is intended to fulfill the requirements of the IPIA and is not intended to substitute for other program integrity activities in which the States are currently engaged. In addition, the MEQC program is a statutory requirement, so we cannot suspend it during the year a State is measured under PERM. However, as previously stated, we are considering how we can reduce duplication of efforts and have addressed the negative case reviews required under both the PERM and MEQC programs.

Regarding stratification of the universe, we agree that some States may face challenges in identifying cases for appropriate placement in each stratum. However, the stratification allows for reviews of an equal number of (a) Applications (that is, initial determinations); (b) redeterminations; and (c) all other cases; and provides administrative ease in the review of cases in strata (1) and (2), since the State's most recent action will have occurred within one to two months of the sample month. (The most recent action for cases in stratum (3) may have occurred up to twelve months prior to the sample month.)

If we did not stratify the universe in this manner, States would incur additional cost and burden associated with verifying eligibility for all cases in the sample at up to twelve months prior to the sample month. The result could be an increased number of cases where eligibility could not be determined as well as a loss of information on error causes that is both timely and specific to applications and redeterminations on which a State can base corrective actions.

Comment: A commenter argued that basing the sampling process upon individual recipients, rather than on cases, adds complexity to the anticipated programming time and costs.

Response: Sampling by individuals rather than by cases was a State recommendation, through public comment, that we adopted. We recognize that all State Medicaid and SCHIP programs are unique, and that sampling by individuals would not accommodate all States. However, in order to have a consistent approach to the eligibility measurement, one approach to sampling and review is necessary.

Comment: A commenter stated that there is not a clear schedule to pull eligibility samples and begin reviews. The commenter stated that if such work is implemented without sufficient time, then an unrealistic expectation will be put on the States.

Response: The instructions posted on the CMS PERM Web site include a timeline that details the entire review process for FY 2007 (which allows these States a 3-month implementation period due to the short notice). The timeline will be revised and posted to the CMS PERM Web site prior to the beginning of FY 2008 to reflect sampling over a full year beginning in FY 2008. This can be found at *http://www.cms.hhs.gov/PERM.*

Comment: A commenter stated that, as demonstrated in the PERM pilot, unexpected changes, which impact eligibility, do occur after eligibility has been confirmed. Therefore, according to the commenter, the administrative period is applicable if States are required to determine the accuracy of eligibility determinations based on actual case circumstances in the review month.

Response: The PERM eligibility review verifies eligibility as of the State's most recent action on the case. Therefore, changes after the State's last action are not within the scope of the reviews, so the administrative period would not apply.

Comment: A commenter asks whether the States or CMS' statistical contractor will determine the number of eligibility reviews required to achieve the desired precision level.

Response: For FY 2007, FY 2008, and FY 2009, the statistical contractor has determined the sample size for the eligibility reviews. Future sample sizes will be set by the statistical contractor and will be based on the size of the variance from the State's previous error rate estimate under PERM. The State will have the opportunity to comment and recommend an alternative sample size, if appropriate.

Comment: A commenter asked whether CMS could provide specific information about eligibility review verification requirements.

Response: This information is included in our instructions, which are posted on the CMS PERM Web site at *http://www.cms.hhs.gov/PERM.*

Comment: A commenter asked whether States would be required to review the eligibility of all beneficiaries within a case, or would eligibility be reviewed for one selected individual beneficiary within a case.

Response: States are required to review eligibility for one beneficiary. If a State cannot identify individuals without requiring major system changes, it should demonstrate in its sampling plan how it will randomly select one person from the case sampled.

Comment: A commenter asked, since the interim regulation states that Medicaid and SCHIP are measured separately, whether CMS would recommend a way to review eligibility when it is determined for both Medicaid and SCHIP within an integrated eligibility system and a request for health care coverage is considered an application for Medicaid or SCHIP.

Response: A State would need to identify the Medicaid-approved cases for the Medicaid universe and the SCHIP-approved cases for the SCHIP universe and review the cases accordingly. For the negative reviews, if the application is denied for one or both programs, the case would be reviewed under both programs, or alternatively, under the one program for which eligibility was denied to ensure the denial was correct.

Comment: A commenter asked if CMS is going to provide States with an eligibility data collection system to ensure uniformity in the error rate calculation.

Response: States are responsible for the eligibility data collection, which will be submitted on CMS-provided forms for reporting purposes. We will provide a State with an error rate calculator to calculate the rate at the State's request.

Comment: One State recommends that a footnote be included in State reports when a SCHIP participant is found eligible for Medicaid but must be reported as ineligible for both programs.

Response: If a SCHIP case is found eligible for Medicaid but ineligible for SCHIP, it would not be reported as ineligible for both programs. Therefore, we are not adopting this recommendation.

Comment: According to a commenter, to exclude cases denied or terminated for failing to complete the application or

re-determination process eliminates valuable insight into a certifying agency's case processing practices and complaint resolution process.

Response: We agree. The decision to exclude these cases came from the eligibility workgroup. Panel members felt that States should be measured on the eligibility determinations that were based on complete information and participation by the beneficiary. However, there could be instances where a case should be properly included in the universe, for example, the beneficiary provided requested information but the State failed to act on the information and denied or terminated eligibility. Since a State's system most likely would not be able to make the distinction between these types of cases (or similar case situations) that should be included in the universe and other cases, that is, where the beneficiary did not provide information, we are adopting this recommendation to eliminate the exclusion of any cases in the negative universe and in the sample of redetermination cases.

Comment: A commenter requested that the procedure to exclude from the negative case universe cases that were denied or terminated based upon incomplete applications or cases where beneficiaries did not complete the redetermination process be clarified and that examples be provided for compiling the negative case universe for sample selection for eligibility reviews.

Response: We are adopting the comment not to exclude these cases from the negative case action universe. Therefore, these cases will be included in the compilation of the universe for sample selection purposes.

Comment: A commenter stated that § 431.978(d)(1)(i) excludes cases in which the Social Security Administration, under a 1634 agreement, determines eligibility for Supplemental Security Income (SSI) recipients. The commenter asked what the State should use to review determinations of Medicaid eligibility for SSI recipients in 209(b) States.

Response: Beneficiaries have to apply separately for Medicaid in 209(b) States because these States have one or more eligibility criteria more restrictive than SSI. Therefore, there is no link by law to the receipt of SSI cash and eligibility for Medicaid. States must conduct an eligibility review of this population just like they would for any other case where cash assistance does not convey automatic Medicaid eligibility.

g. Sampling

Comment: A commenter questioned CMS' remarks about producing State level error rates that meet 3 percent precision at a 95 percent confidence level given that the largest of States will have the same sample size requirements as the smallest State. The commenter recommended that States be allowed to draw samples that accurately reflect their unique Medicaid and SCHIP populations.

Response: The sample size chosen is estimated to obtain a precision level of 3 percentage points at the 95 percent confidence level, assuming an eligibility error rate of 5 percent (as decided upon by the eligibility workgroup).

By the nature of sampling, a sample size of 504 is likely to achieve the precision goal with a high probability. Once a State has an eligibility error rate under the PERM program, the State can use that rate to estimate the sample size needed to achieve the confidence and precision levels for the subsequent measurement. Therefore, we are not adopting this recommendation.

Comment: A commenter asked CMS to clarify and further define the sampling parameters (that is, confidence interval, confidence level, and margin of error) States are expected to use for active and negative cases to select the monthly samples.

Response: The details for sample parameters are discussed in our eligibility instructions that are posted on the CMS PERM Web site at *http://www.cms.hhs.gov/PERM.* In addition, our statistical contractor is available to discuss State-specific sampling plan questions.

Comment: A commenter stated that clear guidance is needed as to what States should do in estimating the margin of error for the sample size. The commenter asks whether CMS will allow States to set their own margin of error in the eligibility sampling plans.

Response: States should not set their own margin of error in the eligibility sampling plans but rather should follow the eligibility guidance on this matter.

Comment: Two commenters stated that the sizes of the universe and each stratum will cause an excessive burden on States. One of the commenters stated that CMS' decision to increase the eligibility sample size to produce an equal sample size per stratum does not consider the States' limited resources and fiscal constraints. The other commenter asserts that stratification will lead to a larger sample size, thus creating an excessive burden on the States.

Response: We have estimated the cost and burden for States to sample and review an annual sample size of 504 cases, which are evenly placed into the three strata. The sample size is based on an assumed 5 percent error rate and was not increased to produce an equal number of cases per stratum. We have provided for the finite population and that sample sizes may be reduced in future years based on a State's most recently calculated error rate. Therefore, we do not believe the requirement for States to annually sample and review 504 cases will cause an excessive burden on States.

Comment: A commenter stated that the positive sample size among participating States to meet PERM statistical requirements is understated. Given that the universe size influences the sample size, a State could have a sample size much larger than 201 cases per year. In addition, the commenter said that CMS cannot properly estimate cost and burden to States with sample sizes higher than 501 because CMS will not have sufficient information before the November 15, 2006 submission date for PERM sampling plans.

Response: The commenter is correct that there has not yet accumulated sufficient information to determine how sample sizes may vary across the states. For this reason, we made assumptions, informed by a working group consisting of representatives of several States, for the calculation of sample sizes.

In the initial year of implementation, the States are asked to use the sample sizes specified in the instruction for FY 2007. These sample sizes are 504 cases for active cases and 204 cases for negative cases. If the State had a very small caseload, it could include a finite population adjustment to these sample sizes in its sampling plan.

These sample sizes should be adequate if the assumptions used are accurate. Going forward, as evidence accumulates within individual States regarding the variation in eligibility error rates, the sample sizes may become more tailored to each State's respective circumstances.

Comment: Several commenters stated that CMS has not addressed the validity of the eligibility sampling approach. One commenter asked whether there will be weighting to balance the proportions of the three strata. The commenter stated that the stratification approach poses some methodology issues because the same case may be sampled more than once during the Federal Fiscal Year under review.

Response: There will be weighting to balance the proportions of the three strata. Equal sample sizes are drawn from each of the three strata, but the number of cases in the universe of each stratum will differ. Sampling weights must be applied to obtain the correct eligibility error rate for the complete

universe. The sampled cases and associated payments will be weighted by the inverse of the sampling frequencies with the three strata. This will ensure that the results within the stratum are appropriately weighted across the three strata to reflect the universe of all cases.

We are aware that the stratification approach poses some methodology issues. We have addressed how to review cases sampled more than once in a year in our eligibility instructions.

Comment: A commenter stated that, to prevent oversampling and, thereby reduce costs for States being measured under PERM, sampling should stop once the desired precision and confidence level are reached. The commenter noted that the sample size of 1,000 FFS claims is likely excessive for many States. In addition, the commenter stated that this final rule should state whether attribute and/or variable sampling will be performed.

Response: A goal of the sampling method is that all claims or line items have a positive probability of being sampled. This means that we cannot stop during the fiscal year when a desired level of precision is reached, because claims paid later in the fiscal year may not have a chance to be sampled. That said, if we find that a sample size of 1,000 produces precision levels in excess of those required, the sample sizes will be adjusted in subsequent years. Sampling for FY 2007 will be based on dollar value stratification, a form of attribute sampling.

Comment: A commenter noted that the August 28, 2006 interim final rule indicated that the total estimated annual sample size for Medicaid and SCHIP cases in the active universe is 501 cases per program per State. The commenter observed that formulas for both payment and case error rates were issued in that rule. The commenter asked which formula States should use to meet the statistical criteria. The commenter stated that the sample size used to obtain the desired precision will be different depending on the error rate used and may further be different in each stratum.

Response: The sample size estimate for the active case error rate, which is dollar weighted, is the following. It is taken directly from the instructions: *Payment Error Rate Measurement Verifying Eligibility for Medicaid and SCHIP Benefits FY 2007,* which are on the CMS PERM Web site at *http://www.cms.hhs.gov/PERM.*

Comment: A commenter stated that to accomplish the stratified sample of active cases consisting of one-third new determinations, one-third redeterminations, and one-third ongoing cases, a State would presumably have to estimate the annual number of opening and redetermination actions; calculate an interval; compile the information for each month and draw samples. Thus, the programming for stratified sampling will present some difficult and costly challenges and will impact other State program initiatives.

Response: To stratify cases, the State would identify all cases in the universe that are active in the sampling month. Based on the date of the State's last action and our definitions of cases for each stratum, the State would stratify the cases into the three strata. Next, the State would count the number of cases in each stratum. The State would not have to estimate the number; it would be an actual count. Then, if systematic sampling were used to draw the sample, a skip factor would be developed for each stratum, and, for FY 2007, 18 cases would be sampled a month from each stratum for the first 3 months and 19 cases a month for the last 6 months. The skip factor would be equal to the number in the universe in that stratum divided by sample size, which in this case would be 18. Alternatively, the State could draw 18 cases from each stratum randomly using a random number generator, selecting cases randomly after appropriately numbering the cases.

D. State Requirements

1. State Cost and Burden

a. SCHIP

Comment: Several commenters believed that PERM-related SCHIP activity costs should be 100 percent federally-funded to alleviate the burden on the State costs, resources, and extensive time necessary to support the Federal initiative.

Response: As we stated in the August 28, 2006 interim final rule, our adoption of the recommendation to engage Federal contractors to estimate the FFS and managed care components of Medicaid and SCHIP should reduce the cost and burden that States would have otherwise incurred to conduct medical and data processing reviews on these claims. We further reduced State burden by rotating States on a 3-year cycle, so that States will not incur an annual burden. In that same interim final rule, we noted that States selected to conduct eligibility reviews will be reimbursed for those activities at the applicable administrative Federal match under Medicaid and SCHIP. Finally, in the August 28, 2006 interim final rule, we evaluated and determined that the burden and cost of these responsibilities will not significantly impact the States.

b. Accuracy of Estimates

Comment: A commenter stated that the State cost estimate ($42,348 per program) for furnishing claims information to the Federal contractors is actually higher than estimated because it excludes costs associated with training and technical assistance.

Response: We do not believe that States will incur significant costs in providing such assistance. As stated in the August 28, 2006 interim final rule, we have engaged, and will continue to engage, a review contractor that has demonstrated knowledge and experience with claims reviews. In this way, we have tried to minimize the burden on States and ensure the accuracy of the reviews.

Comment: A commenter stated that, because sections of the interim rule remain unclear, the proposed burden estimates should be revisited when the issues are resolved.

Response: We have revisited the estimates as part of developing this final rule and continue to believe our estimates stated in the interim final rule are reasonable.

Comment: A commenter recommended that States should track their own PERM costs.

Response: States have the option to track their own costs for PERM for planning resources for upcoming years. However, tracking State costs is not required under this rule.

Comment: Two commenters asserted that the cost to the States is grossly underestimated. The commenters stated that the final cost estimate for Medicaid FFS, SCHIP FFS, and managed care reviews is for information collection purposes only. The commenters believed that State activities necessary to comply with CMS directives and to communicate with the national contractors are not accounted for in the estimates. According to the commenters, cost estimates were ignored for the following activities: corrective actions plans, provider education, difference resolution process, and technical assistance.

Response: Most of the cost estimates that the commenter notes were considered. In the August 28, 2006 interim final rule, we included the estimate for the costs of providing information for managed care, conducting eligibility reviews, and developing a corrective action plan. (We believe that the costs of monitoring and evaluating the corrective action plan are part of the States' overall operating procedures and, therefore, we did not

include these costs in our estimates). Estimates of this burden and these costs are indicated in section VI of that interim final rule. We estimated that it would take each selected State up to 500 hours for the FFS component, up to 500 hours for the managed care component, and up to 1,000 hours for the eligibility component of the corrective action plan for each program. Therefore, we estimate that the total annual burden associated with this requirement for 34 programs (Medicaid and SCHIP in 17 States) will be 68,000 hours (2,000 hours per State per program). It should be noted that cost estimates for provider education are included in the corrective action plans.

Cost estimates for the difference resolution process were also estimated. In the August 28, 2006 interim final rule, we stated that the selected States would have the option to enter the difference resolution process, and that States wishing to do so would have to notify the Federal contractor and submit documentation to support its determination that the claim was incorrectly paid. In that same interim final rule, we stated that the burden associated with this requirement would be the time and effort it would take for a State to gather the facts and valid documentation and submit it to the Federal contractor or, upon appeal, to CMS. We anticipate that 17 States (per program for a total of 34 programs) will request difference resolutions for each fiscal year, and that it will take up to 5 hours per claim to request a difference resolution and present evidence to support the State's disagreement with the Federal contractor's determination.

Finally, as stated in the August 28, 2006 interim final rule, we acknowledge that States must provide technical assistance to assist the RC in conducting the medical and data processing reviews (for example, a State may need to explain or clarify unusual policies or procedures and provide training on its MMIS or claims processing system). However, we believe this assistance provided to the contractor will not result in additional costs and estimate that the burden will be minimal.

Comment: A commenter stated that burdens related to State finances and staff resources are exacerbated because each State will deal with 3 contractors in coordinating information and training.

Response: We believe that our adoption of the recommendation to engage Federal contractors has significantly reduced the cost and burden to States. As stated in the August 28, 2006 interim final rule, States will be required to provide technical assistance—not training—on State policies only to the RC, who will examine State policies and the medical records to determine if payment for a FFS claim was medically necessary and paid correctly. States will also provide technical assistance to the RC on the data processing reviews of FFS and managed care claims.

2. Contacts with States

Comment: A commenter proposed that CMS initiate monthly conference calls with States, PERM contractors and sub-contractors to address ongoing PERM concerns and questions.

Response: We are adopting this recommendation and will establish the PERM Technical Advisory Group, which will hold conference calls with States, CMS, and, as appropriate, its contractors as a forum to address ongoing PERM concerns and questions.

3. Corrective Action Plans

Comment: A commenter stated that the interim regulation does not identify the requirements of the corrective action plan.

Response: We detailed the requirements in the preamble of the August 28, 2006 interim final regulation. See 71 FR 51071.

Comment: A commenter asserted that the States' concerns about the costs and resources associated with complying with the requirements of corrective action plans were ignored. The commenter also stated that CMS's intention for corrective action plans to be carried out within the restriction of the ongoing program seems to conflict with the States' goal to reduce improper payments.

Response: In the August 28, 2006 interim final rule, in response to concerns expressed by commenters that it would be impossible to determine the costs and resources that would be needed to comply with CMS's corrective action plan requirements without clarifying those requirements, we outlined the requirements. See 71 FR 51071. In addition, in § 431.992 of the August 28, 2006 interim final rule, we made a good faith estimate of the burden on States to comply with our corrective action plan requirements. See 71 FR 51078.

Comment: A commenter stated that, although administrative cost has been diminished, States will be challenged to evaluate the results and formulate corrective action plans. According to the commenter, this will significantly affect small SCHIP programs with few full-time equivalent positions.

Response: We believe that, even without the requirements placed on them by the PERM program, States would need to take corrective actions to reduce improper payments as a matter of prudently administering the SCHIP program. The findings under the PERM program can serve as a useful tool for all States to reduce improper payments and particularly for States that have no corrective action process currently in place. Further, a good corrective action process entails participation by a panel comprised of a variety of State positions so that no one person would be committed to the process on a full-time basis.

4. Recoveries

Comment: Several commenters noted that States are allowed only to dispute error findings with a difference of more than $100. However, according to the commenters, approximately 10 percent of the PAM and PERM pilot errors were identified as more than $100. The commenters believe that recovery is not cost effective since the Federal share must be refunded within 60 days from the date the overpayment was identified. The commenters recommend that CMS consider a minimal dollar amount, and that the overpayments under $100 should be exempt from recovery and payback of the Federal share.

Response: The $100 threshold applies only to appeals to CMS as part of the difference resolution process. In terms of recoveries, the current requirements are longstanding and the recovery of improper payments identified through the PERM FFS and managed care reviews fall under these requirements. The PERM program is not intended to make revisions to the recoveries requirements. Therefore, we are not adopting this recommendation.

Comment: A commenter recommended that the billing provider be used as the sampling unit so that the billing provider would be able to return the potential overpayment since they initially received it, rather than the provider who performed the service.

Response: Since we are measuring improper payments, the claim is the sampling unit. States are responsible for ensuring recoveries are made to CMS and can recoup or offset the improper payment from the provider.

Comment: A commenter stated that the relationship between States and the Federal government is deteriorating due to the recent Federal auditing and oversight activities (for example, PERM, Medicare and Medicaid program integrity, oversight by CMS, and the General Accounting Office and MEQC audits).

Response: PERM was developed to implement the IPIA. Recent laws such as the IPIA are intended to improve fiscal oversight, to identify fraud and abuse, and to protect taxpayer dollars. States can also benefit since the programs are also funded with State dollars. CMS is committed to maintaining a positive and strong partnership with the States.

IV. Provisions of This Final Regulation

We published a second interim final rule with comment on August 28, 2006 to respond to comments on the October 5, 2005 first interim final rule with comment, to announce that we would measure SCHIP in the same State that would be measured for Medicaid in any given year under PERM, and to set forth the methodology under which eligibility would be reviewed. We invited further comments on the eligibility methodology.

This final rule responds to the public comments on the August 28, 2006 interim final rule (71 FR 51050) and finalizes requirements that States must meet for submitting claims and policies to the CMS Federal contractors for purposes of conducting fee-for-service (FFS) and managed care reviews. This final rule also finalizes the State requirements for conducting eligibility reviews and estimating case and payment error rates due to errors in eligibility determinations.

In the preamble, we summarize the regulatory history of the States' requirements under the PERM program and describe the basis for the national contracting strategy, the selection and rotation of States once every 3 years for Medicaid and SCHIP, the PERM measurement cycle, the methodology for measuring eligibility under the PERM program and information States must submit to support the improper payments measurement under PERM.

This final rule:

- Revises subpart P, § 431.812(b) to add a provision that the negative case action eligibility reviews under PERM can be considered as meeting the negative case action review requirements of this section for purposes of the MEQC program;
- Deletes the requirement under § 431.970(a)(1) that States submit FFS claims stratified by service; and
- Revises the definition of negative case universe under § 431.978(d)(2).

V. Collection of Information Requirements

This document does not impose any new information collection and recordkeeping requirements. The information collection requirements associated with the interim final rule that published on August 28, 2006 (71 FR 51077), have received OMB approval and consequently, need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Note: The OMB approved numbers for the collections of information outlined in the August 28, 2006, interim final rule are as follows: (1) The burden associated FFS and corrective action plan is approved under OMB #0938–0974 with an expiration date of 10/31/2008; (2) The burden associated with managed care and corrective action plan is approved under OMB #0938–0994 with an expiration date of 9/30/2009; and (3) The burden associated with eligibility and corrective action plan is approved under OMB #0938–1012 with an expiration date of 1/31/2010.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). For the reasons discussed below, we have determined that this final rule is not a major rule.

1. Cost Estimate for FFS Reviews

We have estimated that it will cost $17.4 million annually ($16,396,933 in Federal cost and $976,528 in State cost) to review FFS claims and estimate error rates in 34 States (17 States for Medicaid and 17 States for SCHIP). This estimate is based on the Federal cost of engaging the Federal contractors to conduct the reviews and calculate the error rates, and the State cost to submit requested information to support the reviews. We estimated these costs as follows:

Through the use of Federal contractors, we estimated that for the FFS measurement it would cost $15,075,748 in Federal funds ($7,537,874 per program). This estimate is based on our experience to date with the Federal contractors that have been engaged to work on the PERM project. Based on an average of 1,000 claims reviewed per State plus travel and other administrative expenses, the FFS error rate estimates for 34 States would cost approximately $15,075,748 in Federal funds for the Federal contracting cost.

Under the national contracting strategy, we anticipate State cost to be the cost associated with submitting information. We estimated the cost to respond to requests for information for the Medicaid and SCHIP FFS reviews is $2,297,713 ($1,321,185 in Federal cost and $976,528 in State cost). Therefore, the estimated total Federal cost is $16,396,933 and total State cost is $976,528 for FFS measurement.

2. Cost Estimate for Managed Care Reviews

We have estimated that it will cost $5.7 million annually ($5,275,571 in Federal cost and $389,414 in State cost) to estimate managed care error rates for 34 States (17 States for Medicaid and 17 States for SCHIP). This is based on the Federal cost of engaging the Federal contractors to conduct the reviews and calculate the error rates, and the State cost to submit requested information to support the reviews. We estimated these costs as follows:

We estimated that it will cost $4,748,718 in Federal funds annually for a Federal contractor to estimate the error rates for 34 States. We assumed that we will use the same statistical contractor and the same review contractor for managed care and FFS reviews in each program to gain cost efficiencies in administration, overhead and systems. Based on an average of 500 claims reviewed per State plus travel and other administrative expenses, we estimate that it would cost $4,748,718 in Federal funds for the Federal contracting cost.

Under the national contracting strategy, we anticipate State cost to be the cost associated with submitting information, similar to the cost for FFS reviews. As we indicated in the information collection section of this rule, we estimated the cost to respond to requests for information for the managed care reviews would be $916,267 ($526,853 in Federal cost and $389,414 in State cost). Therefore, the estimated total Federal cost is $5,275,571 and total State cost is $389,414 for managed care measurement.

3. Cost Estimate for Eligibility Reviews

Beginning in FY 2007, States will review eligibility in the same year they are selected for FFS and managed care reviews in Medicaid and SCHIP. We estimated that total cost for eligibility review for 34 States is $18.6 million ($10,682,957 in Federal cost and $7,896,098 in State cost). This cost estimate is based on the cost for States to submit information to CMS and the cost for States to conduct eligibility reviews and report rates to CMS. These costs are estimated as follows:

We estimated in the information collection section, that the annualized number of hours required to respond to requests for information for the eligibility review (for example, sampling plan, monthly sample lists, the eligibility corrective action report) for 34 States will be 108,800 hours (3,200 hours per State per program). At the 2007 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($41.46/hour), we calculated a cost of $4,510,848 ($2,593,738 in Federal cost and $1,917,110 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,000 hours required for States to develop and submit a sampling plan; (2) up to 1,200 hours for States to submit 12 monthly sample lists detailing the cases selected for review; and (3) up to 1,000 hours for States to submit a corrective action plan for purposes of reducing the eligibility payment error rate.

For the eligibility review and reporting of the findings, we estimated that each State would need to review an annual sample size of 504 active cases to achieve a 3 percent margin of error at a 95 percent confidence interval level in the State-specific error rates. We also estimated that States would need to review 204 negative cases to produce a case error rate that met similar standards for statistical significance. We estimated that for 34 States the annualized number of hours required to complete the eligibility case reviews and report the eligibility-based error rates to CMS would be 339,320 hours (9,980 hours per State, per program). At the 2007 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($41.46/hour), we calculated a cost of $14,068,207 ($8,089,219 in Federal cost and $5,978,988 in State cost).

Therefore, the total annual estimate of the cost for 34 States to submit information and to conduct the eligibility reviews and report the error rate to CMS is $18,579,055 ($10,682,957 in Federal cost and $7,896,098 in State cost).

4. Cost Estimate for Total PERM Costs

Based on our estimates of the costs for the FFS, managed care and eligibility reviews for both the Medicaid and SCHIP programs at approximately $41.6 million ($32,355,461 in Federal cost and $9,262,040 in State cost), this rule does not exceed the $100 million or more in any 1 year criterion for a major rule, and a regulatory impact analysis is not required.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

We stated in the August 27, 2004 proposed rule that providers could be required to supply medical records or other similar documentation that verified the provision of Medicaid or SCHIP services to beneficiaries as part of the PERM reviews, but we anticipated this action would not have a significant cost impact on providers. Providers would only need to provide medical records for the FFS component of this program. A request for medical documentation to substantiate a claim for payment would not be a burden to providers nor would it be outside the customary and usual business practices of Medicaid or SCHIP providers. Not all States would be reviewed every year and medical records would only be requested for FFS claims, so it would be unlikely for a provider to be selected more than once per program to provide supporting documentation, particularly in States with a large Medicaid or SCHIP managed care population.

In addition, the information should be readily available and the response should take minimal time and cost since the response would merely require gathering the documents and either copying and mailing them or sending them by facsimile. Therefore, we have concluded in this final rule that the provision of medical documentation by providers is within the customary and usual business practice of a provider who accepts payment from an insurance provider, whether it is a private organization, Medicare, Medicaid, or SCHIP and should not have a significant impact on the provider's operations. Therefore, we have determined, and the Secretary certifies, that an impact analysis is not required under the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

These entities may incur costs due to collecting and submitting medical records to the contractor to support medical reviews; but, like any other Medicaid or SCHIP provider, we estimate these costs would not be outside the limit of usual and customary business practices. Also, since the sample is randomly selected and only FFS claims are subject to medical review, we do not anticipate that a great number of small rural hospitals would be asked for an unreasonable number of medical records. As stated before, a State will be reviewed only once, per program, every 3 years and it is highly unlikely for a provider to be selected more than once per program to provide supporting documentation. Therefore, we have determined, and the Secretary certifies, that an impact analysis is not required under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $120 million or more. This final rule does not impose costs on States to produce the error rates for FFS and managed care payments, but only requires States and providers to submit information already on hand to the contractor so that the error rates can be calculated. The costs associated with submitting information for copying and mailing the information or for sending the information by facsimile are minimal.

Based on our estimates of State participation burden for both Medicaid and SCHIP, for 34 States (17 States per Medicaid and 17 States for SCHIP), for the FFS reviews ($976,528), the managed care reviews ($389,414), and eligibility ($7,896,098), we calculated that the annual burden for these States for the PERM program is approximately $9,262,040 in State costs for both Medicaid and SCHIP. The combined costs of both programs total approximately $544,826 for each of the

17 States. Thus, we do not anticipate State costs to exceed $120 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule, which would have imposed significantly more cost burden on States to measure improper payments, had estimated costs of $1 million to $2 million per State. This final rule significantly reduces these costs by requiring States only to submit information to support the medical and data processing reviews. The costs and burden associated with submitting this information are the time and costs to copy and mail the information or, at State option, submit the information electronically.

This final rule does require States selected for review to submit an eligibility sampling plan, monthly sample selection information, summary review findings, State error rate calculations, and other information in order for CMS to calculate the eligibility national error rate. We estimated that the burden to conduct the eligibility measurement for Medicaid and SCHIP for 34 States will be approximately $18,579,055 ($10,682,957 in Federal cost and $7,896,098 in State cost). As a result, we assert that this regulation will not have a substantial impact on State or local governments.

B. Anticipated Effects

The final rule is intended to measure improper payments in Medicaid and SCHIP. States would implement corrective actions to reduce the error rate, thereby producing savings over time. These savings cannot be estimated until after the corrective actions have been monitored and determined to be effective, which can take several years.

C. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services confirms as final the interim final rules published on October 5, 2005 (70 FR 58260) and August 28, 2006 (71 FR 51050), with the following amendments to 42 CFR chapter IV:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart P—Quality Control

■ 2. Section 431.812 is amended by revising paragraph (b) to read as follows::

§ 431.812 Review procedures.

* * * * *

(b) *Negative case reviews.* Except as provided in paragraph (c) of this section, or unless a State is utilizing an approved sampling plan to conduct negative case action reviews under § 431.978(a) and § 431.980(b), the agency must review those negative cases selected from the State agency's list of cases that are denied, suspended, or terminated in the review month to determine if the reason for the denial, suspension, or termination was correct and if requirements for timely notice of negative action were met. A State's negative case sample size is determined on the basis of the number of negative case actions in the universe.

* * * * *

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and SCHIP

■ 3. Section 431.970 is amended by revising paragraph (a)(1) to read as follows:

§ 431.970 Information submission requirements.

(a) * * *

(1) All adjudicated fee-for-service (FFS) and managed care claims information, on a quarterly basis, from the review year;

* * * * *

■ 4. Section 431.978 is amended by revising paragraph (d)(2) to read as follows:

§ 431.978 Eligibility sampling plan and procedures.

* * * * *

(d) * * *

(2) *Eligibility universe—negative cases.* The Medicaid and SCHIP negative universe consists of all negative cases for the sample month. The negative case universe is not stratified.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: April 10, 2007.

Leslie Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 15, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–4240 Filed 8–24–07; 4:00 pm]

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Federal Register

Friday,

August 31, 2007

Part IV

Department of Education

Funding Priorities for the Disability and Rehabilitation Research Projects and Centers Program; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs), Rehabilitation Research and Training Centers (RRTCs), and Rehabilitation Engineering Research Centers (RERCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for DRRPs, RRTCs, and RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes 10 priorities for DRRPs, 11 priorities for RRTCs, and 6 priorities for RERCs. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before October 1, 2007.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term ''Proposed Priorities for DRRPs, RRTCs, and RERCs'' and the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

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 under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This notice of proposed priorities is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

One of the specific goals established in the Plan is for NIDRR to publish all of its proposed priorities, and following public comment, final priorities, annually, on a combined basis. Under this approach, NIDRR's constituents can submit comments at one time rather than at different times throughout the year, and NIDRR can move toward a fixed schedule for competitions and more efficient grant-making operations. This notice proposes priorities that NIDRR intends to use for DRRP, RRTC, and RERC competitions in FY 2008 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for each of these priorities. The decision to make an award will be based on the quality of applications received and available funding.

NIDRR also intends to publish at least one additional separate notice of proposed priority for an additional DRRP that would focus on traditionally underserved populations, as required under section 21 of the Rehabilitation Act of 1973, as amended. Moreover, for FY 2008 competitions using priorities that already have been established and for which publication of a notice of proposed priority is unnecessary (e.g., competitions for Field-Initiated Projects, Advanced Rehabilitation Research Training Projects, Fellowships, and Small Business Innovation Research Projects), NIDRR has published or will publish notices inviting applications. More information on these other projects and programs that NIDRR intends to fund in FY 2008 can be found on the Internet at the following site: *http://www.ed.gov/fund/grant/apply/nidrr/priority-matrix.html.*

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority or topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 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, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in one or more notices in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational.

The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

In this notice, we are proposing 10 priorities for DRRPs, 11 priorities for RRTCs, and 6 priorities for RERCs.

For DRRPs, the proposed priorities are:

- Priority 1—Health Care Coordination for Individuals with Physical Disabilities.
- Priority 2—Assistive Technology (AT) Reuse.
- Priority 3—Health and Health Care Disparities Among Individuals with Disabilities.
- Priority 4—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects.
- Priority 5—Classification and Measurement of Medical Rehabilitation Interventions.
- Priority 6—Vocational Rehabilitation Service Models for Individuals with Autism Spectrum Disorders.
- Priority 7—Center on Knowledge Translation for Assistive Technology Transfer.
- Priority 8—Asset Accumulation and Economic Self-Sufficiency for Individuals with Disabilities.
- Priority 9—Technology Transfer in Resource-Limited Environments.
- Priority 10—Research and Knowledge Translation Center for Individuals with Disabilities and Their Families.

For RRTCs, the proposed priorities are:

- Priority 11—General Rehabilitation Research and Training Center (RRTC) Requirements.
- Priority 12—Enhancing the Health and Wellness of Individuals with Neuromuscular Diseases.
- Priority 13—Enhancing the Health and Wellness of Persons with Arthritis.
- Priority 14—Stroke Rehabilitation.
- Priority 15—Personal Assistance Services (PAS) in the 21st Century.
- Priority 16—Participation and Community Living for Individuals with Psychiatric Disabilities.
- Priority 17—Multiple Sclerosis: Interventions to Maximize Health, Well-Being, and Participation.
- Priority 18—Aging with Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation.
- Priority 19—Disability Statistics and Demographics.
- Priority 20—Health and Function Across the Lifespan of Individuals with Intellectual and Developmental Disabilities.
- Priority 21—Participation and Community Living for Individuals with Intellectual and Developmental Disabilities.

For RERCs, the proposed priorities are:

- Priority 22—RERC for Hearing Enhancement.
- Priority 23—RERC for Accessible Public Transportation.
- Priority 24—RERC for Prosthetics and Orthotics.
- Priority 25—RERC for Communication Enhancement.
- Priority 26—RERC for Universal Interface and Information Technology Access.
- Priority 27—RERC for Wheeled Mobility.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Proposed Priorities

Priority 1—Health Care Coordination for Individuals With Physical Disabilities

Background

Individuals with disabilities use a disproportional share of health care services in the United States (DeJong *et al.*, 2002). The Centers for Medicare and Medicaid Services (CMS) programs recognize this trend and try to control its economic consequences by enrolling individuals with disabilities in managed care programs in increasing numbers (Palsbo & Mastal, 2006). A small but growing number of Medicaid managed care plans are designed specifically for individuals with disabilities. These plans feature intensive care coordination services that integrate the complex health and long-term care needs of individuals with disabilities (Palsbo & Mastal, 2006; Master, 2003).

Pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, CMS also contracts with a growing number of Medicare health plans to provide health care coordination and services for Medicare beneficiaries who have severe or disabling chronic conditions (Peters, 2005).

Health care coordination is an increasingly important component of high-quality health care for individuals with disabilities (Cheng *et al.*, 2004; Lawthers *et al.*, 2003; Kroll, 2003). On average, individuals with disabilities have more complex and multi-faceted health care needs than individuals without disabilities. For example, individuals with disabilities often require the involvement of multiple medical and ancillary providers, including long-term care providers (DeJong *et al.*, 2002). Individuals with disabilities also often find it difficult to navigate the complex, fragmented health and long-term care service systems that are critical to maintaining their health, functional abilities, and independence in the community. Recognizing the

importance of integration and coordination of health and long-term care services, NIDRR states that ''individuals with disabilities should have access to an integrated continuum of health care services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs'' (NIDRR Long-Range Plan, 2005–2009). Toward this goal, NIDRR seeks to sponsor rigorous research to assess the outcomes associated with managed health care coordination programs for individuals with disabilities.

A number of small pilot studies suggest an association between enrollment in managed health care coordination programs for individuals with disabilities and positive outcomes such as increased satisfaction with health care services, greater access to a wide variety of health and long-term care services, and decreased utilization of costly emergency and hospital-based services (Surpin, 2007; Palsbo, Mastal, & O'Donnell, 2006; Master, 2003). More systematic, peer-reviewed research is required to determine the extent to which these health care coordination programs for individuals with disabilities relate to improvements in both the health and health care experiences of their clients and to cost savings for public financing mechanisms.

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National Institute on Disability and Rehabilitation Research. Notice of Final Long Range Plan for Fiscal Years 2005–2009. Pages: 8166–8200. *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

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Surpin, R. (2007). Independence Care System: A Disability Care Coordination Organization in New York City. Journal of Ambulatory Care Management. 30(1): 52–63.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Health Care Coordination for Individuals with Disabilities. The purpose of this priority is to conduct research on the outcomes of Medicare or Medicaid managed health care coordination programs for individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge about the extent to which enrollment in health care coordination programs enhances access to health care for individuals with disabilities. The DRRP must contribute to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded health care coordination programs for individuals with disabilities.

(b) New knowledge about the health outcomes associated with participation in health care coordination programs for individuals with disabilities. The DRRP must contribute to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded health care coordination programs for individuals with disabilities.

(c) New knowledge about potential Medicaid or Medicare cost savings that are associated with health care coordination efforts for individuals with disabilities. The DRRP must contribute to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded health care coordination programs for individuals with disabilities.

In addition, the DRRP must work with the NIDRR Project Officer to coordinate its research efforts with the Centers for Medicare and Medicaid Services—Office of Research, Development, and Information.

Priority 2—Assistive Technology (AT) Reuse

Background

Reuse programs are emerging as one potential solution to providing more assistive technology (AT) to individuals with disabilities at lower costs (Pass It On Center). For example, the Rehabilitation Services Administration (RSA) of the U.S. Department of Education has funded model demonstration projects to establish or expand statewide AT device reutilization programs. Device reuse programs, such as exchange programs and reassignment programs, facilitate the transfer of previously-used AT from one consumer to another. Each of these programs has distinct features and benefits. An exchange program assists in connecting users to transfer AT directly among themselves. Reassignment programs, on the other hand, accept used AT, sanitize it, identify appropriate users, and redistribute the AT following sanitization and matching.

One advantage of reuse programs, in general, is that they provide consumers with access to AT devices at reasonably lower costs. AT equipment provided through these programs also leads to an increased capacity for community living and participation by individuals with disabilities. AT reuse programs meet varied needs and circumstances surrounding consumer access to AT, such as access on a temporary basis, or access for trial purposes to assess the benefit and effectiveness of a device for a consumer's use.

A number of barriers and obstacles limit the utility of AT reuse programs. A recent study found that individuals with disabilities or other family members, not third parties, most frequently pay for commonly used AT devices, special adaptations, and environmental accommodations (Carlson & Ehrlich, 2006). Consumer access to AT and compensation for AT is often limited by conflicting eligibility requirements of current policies regulating the provision of AT. In addition, third-party payment restrictions frequently minimize the extent to which Medicare, Medicaid, private insurance, and vocational rehabilitation can assist with AT costs. Increased awareness of the potential costs and benefits associated with AT reuse programs can positively impact their use, and in addition, has implications for third-party payment coverage for reused AT. Furthermore,

AT reuse programs do not have the benefit of a national coordinated system to assist in sustaining or expanding programs. Nor do AT reuse programs have the benefit of research that has identified methods, models, and measures for enhancing program effectiveness and improving consumer outcomes.

At the present time, there is little data available to guide the management, enhancement, or expansion of these programs. Few research studies have been conducted to inform the AT reuse field of validated methods, models, and measures that lead to improved program and consumer outcomes. This field needs new knowledge regarding factors that influence success of AT reutilization programs, *e.g.*, program design, staffing, training, funding sources, and use of collaborative partnerships in operating AT reuse programs. Specifically, more research is needed to examine how these and other factors affect program outcomes and to identify the most effective measures available to assess program quality as well as the costs and benefits of the program. Numerous reuse programs in the United States could benefit from research in this area.

References

Carlson, D. & Ehrlich, N. (2006). Sources of payment for assistive technology: Findings from a national survey of persons with disabilities. Assistive Technology, 18(1), 77–86.

Pass It On Center. *Http://www.passitoncenter.org.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Assistive Technology (AT) Reuse for individuals with disabilities. The purpose of this priority is to support research that will identify methods, systems, policies, and collaborative strategies to improve reutilization and recycling of AT. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced understanding of how third-party payments for purchases of AT affect AT reuse programs. The DRRP must contribute to this outcome by conducting an analysis of current policy and consumer eligibility requirements and by generating relevant recommendations related to AT reuse.

(b) New knowledge that positively affects the establishment, expansion, and maintenance of AT reuse programs. The DRRP must contribute to this outcome by conducting research studies validating effective methods and models for conducting AT reutilization activities (*e.g.*, program design; alternative recycling methods; partnerships; program marketing strategies; and recruitment, retention, and training of AT reuse staff).

(c) Improved methods and strategies for assessing the costs and benefits, including cost-savings, of AT reuse programs. The DRRP must contribute to this outcome by identifying, developing, and testing appropriate models to be used at the program level that can help inform third-party payers of the costs and benefits associated with AT reuse programs.

(d) Improved understanding of AT reuse outcomes for individuals with disabilities. The DRRP must contribute to this outcome by conducting studies that assess and inform the AT field about the impact of acquiring AT through reuse programs.

(e) Improved collaboration and use of research findings through effective coordination within the network of relevant NIDRR RRTCs, Rehabilitation Engineering Research Centers, DRRPs, and federally funded programs, such as the Rehabilitation Services Administration (RSA) AT State grants, the National AT Device Reutilization Coordination and Technical Assistance Center, and grantees under RSA's Model Demonstrations for AT Device Reutilization program.

Priority 3—Health and Health Care Disparities Among Individuals With Disabilities

Background

In 2005, the U.S. Surgeon General released a ''Call to Action to Improve the Health and Wellness of Persons With Disabilities'' that delineated a series of strategies to optimize the health and wellness of individuals with disabilities, (U.S. Department of Health and Human Services (HHS), 2005). The Surgeon General proposed these strategies in light of the growing body of research literature indicating that individuals with disabilities are, on average, less likely than those without disabilities to report positive health (Krahn, Hammond, & Turner, 2006; Hough, 1999) and less likely to receive recommended health care services (Kroll *et al.*, 2006; McCarthy *et al.*, 2006; Jones & Beatty, 2003).

While the body of research that examines health disparities between individuals with and without disabilities is expanding, few studies have examined the health and health care disparities within the diverse population of individuals with disabilities in the United States. Health disparities recently have been defined as ''observed clinically and statistically significant differences in health outcomes or health care use between socially distinct vulnerable and less vulnerable populations'' (Kilbourne *et al.*, 2006). The broad population of 52 million individuals with disabilities (HHS, 2005) is heterogeneous in terms of a number of factors that may be related to increased vulnerability for poor health care access and poor health. These factors include, but are not limited to, disabling condition category (*i.e.*, mental illness, sensory, physical, cognitive, or combinations thereof), disability severity, age, gender, race, ethnicity, socioeconomic status, education level, urban/rural status, health insurance payer type (Medicare, Medicaid, private insurance), provider type, and other social, personal, and environmental characteristics.

NIDRR recognizes that ''while health services researchers are increasingly attuned to racial and ethnic disparities in health care, less attention and fewer resources are devoted to disability-related disparities and the innovations in policy and practice that might reduce them'' (NIDRR Long Range Plan, 2005). The Health and Function chapter of the NIDRR Long Range Plan promotes research on the health and health care experiences of the wide diversity of individuals with disabilities (NIDRR Long Range Plan, 2005).

Given the wide diversity of individuals with disabilities and the limited information available about existing health care access and outcome disparities that exist within this population, research is needed to improve our understanding about the factors that contribute to health disparities. New knowledge about these factors can be used to create targeted policies, programs, and interventions that promote health and wellness among the individuals with disabilities who are most vulnerable and most likely to demonstrate health outcomes traditionally attributed to disparate treatment or health care access difficulties.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Health and Health Care Disparities Among Individuals With Disabilities. The purpose of this priority is to build a knowledge base about health care access and health outcomes among the diverse population of individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) A foundation of available knowledge about health disparities among subpopulations of individuals with disabilities. The DRRP must contribute to this outcome by conducting a review and synthesis of existing research on health and health care access among individuals with disabilities or subgroups of individuals with disabilities. The DRRP must then use this review and synthesis to inform the subsequent research and evaluation efforts of the DRRP.

(b) New knowledge about system-level factors that are associated with the health and health care access of individuals with disabilities. The DRRP must contribute to this outcome by conducting research on the extent to which the health and health care access of individuals with disabilities are related to system-level factors that include, but are not limited to, rural or urban status, as well as characteristics of their health care insurance or health care providers.

(c) New knowledge about the individual-level characteristics of individuals with disabilities that are associated with their health and access to health care. The DRRP must contribute to this outcome by conducting research on the extent to which the health and health care access of individuals with disabilities are related to their disabling condition categories (mental illness, sensory, physical, cognitive, or combinations thereof), disability severity, age, gender, race, ethnicity, socioeconomic status, education level, or other individual-level characteristics.

(d) Improved policies, programs, or interventions that promote the health and health care access of the subpopulations of individuals with disabilities who are least likely to receive recommended health care services. The DRRP must contribute to this outcome by applying knowledge derived from research conducted under paragraphs (a), (b), and (c) of this priority.

In addition, the DRRP must collaborate with the Rehabilitation Research and Training Center on Health and Wellness, and other projects as identified through consultation with the NIDRR project officer.

Priority 4—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects

Background

The Centers for Disease Control and Prevention (CDC) report that at least 1.4 million individuals sustain a traumatic brain injury (TBI) in the United States each year (Langlois, Rutland-Brown, & Thomas, 2004). Of these, approximately 50,000 die, 235,000 are hospitalized, and 1.1 million are treated and released from emergency departments. These estimates do not include those individuals who sustained a TBI and did not seek medical care, or who were seen only in private doctors' offices. The three leading causes of TBI are motor vehicle/traffic collisions, falls, and assaults.

CDC reports that each year an estimated 80,000 to 90,000 Americans sustain TBI resulting in permanent disability. At least 5.3 million Americans have a long-term or lifelong need for help to perform activities of daily living as a result of TBI (Thurman *et al.,* 1999). The nature and extent of disability resulting from TBI depend on several factors, such as the severity and location of the injury, the length of impaired consciousness, the age and general health of the patient, and the intensity of rehabilitation services (Cifu *et al.,* 2003; Dikmen *et al.,* 2003; Sarajuuri *et al.,* 2005). Common clinical sequelae of TBI include problems with cognition, sensory processing, communication, and behavioral or mental health. Some TBI survivors also can develop long-term medical complications, such as Parkinson's disease and other motor problems, Alzheimer's disease, and post-traumatic dementia (National Institute of Neurological Disorders and Stroke, 2002).

NIDRR created the TBI Model Systems (TBIMS) program in 1987 to demonstrate the benefits of a coordinated system of neurotrauma and rehabilitation care and to conduct innovative research on all aspects of care for those who sustain TBI. The mission of the TBIMS program is to improve the lives of persons who experience TBI and their families by creating and disseminating new knowledge about the natural course of TBI and rehabilitation treatment and outcomes for individuals who sustain TBI. NIDRR currently funds 14 TBIMS centers throughout the United States. (Additional information on the TBIMS centers can be found at *http://www.naric.com*). These centers provide comprehensive systems of brain injury care to individuals who sustain TBI. They also conduct TBI research, including clinical research and the analyses of standardized data in collaboration with other related projects. The research activities of the TBIMS centers include participation in joint research module projects, which range from pilot research to more extensive studies. TBIMS centers also are required to contribute information on common data elements to a centralized TBIMS database. (Additional information on the TBIMS database can be found at *http://www.tbindsc.org.*) To date, TBIMS centers have contributed 6157 cases to the TBIMS database, with followup data extending to 15 years post injury.

In 2003 NIDRR leveraged the capacity of the TBIMS program by funding large-scale collaborative research projects.

These collaborative projects included a randomized controlled trial of the effectiveness of amantadine hydrochloride in promoting recovery of functioning following TBI, and a study of the effect of scheduled telephone intervention on outcomes after TBI. Through the funding of this priority, the TBIMS program will continue to serve as a platform for multi-site research that contributes to evidence-based rehabilitation interventions and improves the lives of individuals with TBI.

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Proposed Priority

The Assistant Secretary proposes a priority for Disability and Rehabilitation Research Projects (DRRPs) on Traumatic Brain Injury Model Systems (TBIMS) Collaborative Projects. Each DRRP under this priority must conduct research that contributes to evidence-based rehabilitation interventions, including, but not limited to, medical, psychological, vocational, and social interventions for the purpose of improving the lives of individuals with traumatic brain injury (TBI).

To be eligible under this priority, an applicant must be currently funded under NIDRR's TBIMS program.

Under this priority, each DRRP must be designed to contribute to the following outcomes:

(a) Increased utilization of the TBIMS capacity. The DRRP must contribute to this outcome by collaborating with three or more of the NIDRR-funded TBIMS centers (for a minimum of four TBIMS sites).

Note: Applicants under this priority may propose to include other TBI research sites that are not participating in a NIDRR-funded TBIMS program in their collaborative research projects.

(b) Improved long-term outcomes of individuals with TBI. The DRRP must contribute to this outcome by using clearly identified research designs to conduct collaborative research on questions of significance to TBI rehabilitation. The DRRP's research must focus on one or more specific domains identified in NIDRR's Final Long-Range Plan for FY 2005–2009, including health and function, participation and community living, technology, and employment, and must be designed to ensure that the research study has appropriate research hypotheses and methods to generate reliable and valid findings.

In addition, the DRRP must address the following requirements:

- Demonstrate the capacity to carry out collaborative, multi-site research projects, including the ability to coordinate research among centers; maintain data quality; and adhere to research protocols, confidentiality requirements, and data safety requirements.
- Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences. (Additional information on this center can be found at *http://uwctds.washington.edu/projects/msktc.asp*).

Priority 5—Classification and Measurement of Medical Rehabilitation Interventions

Background

One of the central objectives of NIDRR-funded medical rehabilitation research is to ''increase the number of interventions demonstrated to be efficacious in improving health and function outcomes in targeted disability populations'' (NIDRR Long Range Plan, 2005–2009). To demonstrate that a treatment is efficacious, both the intervention and the intended outcome must be operationally defined and measured in a rigorous way.

NIDRR-sponsored researchers have been leaders in the development of widely used outcomes measures that are employed to help determine the impact of medical rehabilitation on the health and function of individuals with disabilities, as well as the impact of medical rehabilitation on the participation of these individuals in society. While the ability to measure outcomes of medical rehabilitation continues to mature through recent and ongoing NIDRR-sponsored research, the ability to classify, measure, and replicate specific interventions within the complex medical rehabilitation process is still in its infancy. A recent analysis of published research on medical rehabilitation interventions indicates that nearly two-thirds of articles fail to describe adequately the rehabilitative treatment being evaluated (Dijkers *et al.,* 2002).

Medical rehabilitation has been referred to as a ''black box'' because the wide-range of interventions that take place within rehabilitation settings have not been classified or measured in a systematic way (DeJong *et al.,* 2004). Determining the components of the medical rehabilitation process that positively impact outcome (i.e., the ''active ingredients'') is challenging. This is due to the simultaneous delivery of inter-related treatments by a variety of allied health professionals to individuals with unique needs. Development of a treatment taxonomy (i.e., a systematic method for classifying and measuring rehabilitation interventions) will promote the quality and rigor of rehabilitation research and will foster the transfer of evidence-based treatments into clinical practice (Whyte, 2003).

In the past, NIDRR has sponsored rehabilitation outcomes research that can serve as a basis for future efforts to develop a taxonomy of medical rehabilitation interventions. For instance, a recent NIDRR-funded stroke outcomes research project involved the creation of point-of-contact forms for recording the delivery of rehabilitation interventions provided by physical therapists (Latham *et al.,* 2005), occupational therapists (Richards *et al.,* 2005), speech-language pathologists (Hatfield *et al.,* 2005), and other allied health professionals. A major strength of this project was that it relied upon the rich experiences and expertise of front-line rehabilitation clinicians to create detailed forms for collecting data about specific interventions. A limitation of this bottom-up, inductive approach to classifying and measuring rehabilitation

interventions is its general lack of a theoretical foundation. A theoretical foundation would have the benefit of guiding the collection and analysis of treatment and outcomes data, and increase the field's ability to see how seemingly disparate treatments fit together into a coherent framework for rehabilitation practice and functional recovery (DeJong *et al.,* 2004). Efforts to develop rehabilitation intervention taxonomies must be guided by treatment theories in order to increase the likelihood that ''active ingredients'' of rehabilitative care can be isolated and replicated (Whyte, 2006).

Other clinical fields, such as nursing (Dochterman & Bulechek, 2004), have been actively developing intervention taxonomies to guide clinical service delivery, rigorous clinical documentation, and effectiveness research in a wide range of nursing subfields. Literature describing intervention taxonomies and their development in other fields are likely to be instructive to those engaged in the development of a medical rehabilitation treatment classification system.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Classification and Measurement of Medical Rehabilitation Interventions. This DRRP must conduct research and development toward the creation of a taxonomy of medical rehabilitation interventions. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced research capacity and improved clinical practice in the field of medical rehabilitation. The DRRP must contribute to this outcome by conducting research to develop validated methods for the systematic classification of the broad range of medical rehabilitation interventions delivered by rehabilitation physicians, physical therapists, occupational therapists, speech language pathologists, rehabilitation nurses, rehabilitation psychologists, and other allied health professionals.

(b) Enhanced research capacity and improved clinical practice in the field of medical rehabilitation through the application of one or more treatment theories to guide the development of a rehabilitation treatment taxonomy.

(c) Collaboration with relevant NIDRR-sponsored projects, such as the Rehabilitation Research Training Center on Measuring Rehabilitation Outcomes, and other projects as identified through consultation with the NIDRR project officer.

Priority 6—Vocational Rehabilitation Service Models for Individuals With Autism Spectrum Disorders

Background

In recent years, policy makers, educators, and rehabilitation service providers have become increasingly aware of the critical shortage of services available to youth and young adults with Autism Spectrum Disorders (ASDs), including vocational rehabilitation services (Dew & Alan, 2007). ASDs are a group of lifelong developmental disabilities that include autistic disorder, pervasive developmental disorder-not otherwise specified, and Asperger disorder. ASDs are characterized by impairments in social interactions and verbal and nonverbal communication, as well as the presence of repetitive or unusual behaviors and interests (Centers for Disease Control and Prevention (CDC), 2006a). The severity of impairments can range from mild to severe. Recent prevalence estimates vary, indicating that ASD occurs in 2 to 6 individuals per 1000 individuals, that is, between 1 in 500 and 1 in 166 children have an ASD. ASDs are four times more likely to occur in boys than in girls. The CDC (2006b) reported that ASDs are more prevalent than certain other childhood disabilities, such as cerebral palsy (2.8 per 1000 children), hearing loss (1.1 per 1000 children), vision impairment (0.9 per 1000 children), and Downs syndrome (1.25 per 1000 children) (CDC, 2006b). ASDs usually are diagnosed before the age of three, and the effects are lifelong, although impairments may be attenuated with intervention.

Like other transition-age youth with disabilities, students diagnosed with ASD who have turned 22 or graduated from high school with a regular diploma generally no longer have a legal right to appropriate transition services, such as life skills training, transportation, vocational training, and individual and family counseling, under the Individuals with Disabilities Education Act (IDEA) (National Longitudinal Transition Study-2 (NLTS–2) 2005). Large proportions of youth with ASD rated low on self-care tasks, functional cognitive skills, social skills and communication when compared to the entire population of youth with disabilities served under IDEA (NLTS–2, 2005). Many families find that the services provided to individuals diagnosed with ASD are not tailored to the needs of the children and young adults in this population. Families also report that locating, accessing, and financing needed services for these young adults requires navigating complicated public and private medical, social, and vocational rehabilitation service systems (American Society of Autism, 2001).

In 2005, fewer than 2,000 individuals with ASDs received vocational rehabilitation services. Of these individuals, only 1,200 were successfully employed (Dew & Alan, 2007). Of the youth with ASDs who were out of school one year or more, only 1 in 5 reported receiving services from a vocational rehabilitation State agency. These youth with ASDs also were less likely to be employed than youth with other disabilities, and the

employed youth with ASDs worked fewer hours than employed youth with other disabilities (NLTS–2, 2005). Increased vocational and rehabilitation interventions are needed if these individuals are to experience vocational and economic success equal to the success of transition-age youth without ASD.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Vocational Rehabilitation Service Models for Individuals with Autism Spectrum Disorders (ASDs). This DRRP must conduct research on vocational rehabilitation (VR) service models for individuals with ASDs that contributes to evidence-based rehabilitation interventions to improve the lives of individuals with ASDs. Under this priority, the DRRP must be designed to contribute to one or both of the following outcomes:

(a) Improved vocational and postsecondary education outcomes of individuals with ASDs. The DRRP must contribute to this outcome by developing or testing VR intervention strategies for individuals with ASDs, the measures needed to assess the effectiveness of VR intervention strategies for individuals with ASDs, or both.

(b) Improved long-term vocational and postsecondary education services for individuals with ASDs. The DRRP must contribute to this outcome by analyzing the factors affecting the organization and delivery of these services to individuals with ASDs and by recommending changes that could improve these service delivery mechanisms.

Priority 7—Center on Knowledge Translation for Assistive Technology Transfer

Background

While billions of dollars are expended on technology-related research and development efforts in the United States each year (Association of University Technology Managers, 2005), very little of this funding is applied toward development of technology to improve the lives of individuals with disabilities (National Council on Disability, 2000). NIDRR addresses this critical niche with two grant programs that are dedicated to the application of technology and the development of products and devices that are intended to improve the lives of individuals with disabilities: The Rehabilitation Engineering Research Centers (RERC) and Small Business Innovation Research (SBIR) programs.

For 30 years, the RERC program and its predecessor, the Rehabilitation Engineering Centers program, have been a major force in the development of technology to enhance independent function and societal participation for individuals with disabilities. For over a decade, NIDRR's SBIR program has encouraged small businesses to explore their technological potential by supporting proof of concept investigations of prototype devices intended to benefit individuals with disabilities.

In addition to supporting the research and development of products and devices that are designed to improve the lives of individuals with disabilities through its RERC and SBIR programs, NIDRR is also expected, under section 200(3)(D) of the Rehabilitation Act of 1973, as amended, to promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects.

The term ''technology transfer'' has been defined as the process by which university-developed technologies are commercialized (Powers, 2004) and, more specifically, as the ''transmittal of developed ideas, products, and techniques from a research environment to one of practical application by consumers'' (National Council on Disability, 2000). The processes involved in technology transfer are understood to be an important component of knowledge translation (KT), which refers to the steps between the generation of knowledge and its application to produce beneficial outcomes for society (Canadian Institutes for Health Research, 2005).

Technology transfer for individuals with disabilities is a specific subset of the current technology transfer effort. Technology transfer for products intended for use by individuals with disabilities is often difficult because of the small markets served by any one particular assistive technology product or device. While several government and private agencies are working to promote technology transfer for larger and more lucrative markets, very few Federal efforts focus on the transfer of technology for use by individuals with disabilities (National Council on Disability, 2000). Not only is NIDRR mandated to fill this gap, but it is well positioned to do so, given the research and development work supported and the scientist-market networks established through its RERC and SBIR programs.

Research from the broader technology transfer field provides limited guidance on how to improve technology transfer for individuals with disabilities. Although some researchers have examined the processes involved in technology transfer as well as methods for evaluating transfer efforts such as best practice analyses (e.g., Erich & Gutterman, 2003; Leahy, 2003; Tornatzky, 2001), research in this area is still limited. For example, best practices analyses have generally involved qualitative case descriptions rather than systematic tests of the models, methods, and measures used for successful technology transfer. A strong need remains for the systematic review of existing models, methods, and measures as well as for the identification of best practices in technology transfer. Once identified, best practices for technology transfer must be adopted by key stakeholders. Training and technical assistance have been named as important methods for promoting the adoption of best practices and, thus, for facilitating the success of the commercialization process (Canadian Institutes of Health Research, 2005).

Current Federal investments are attempting to meet the need for technology transfer research generally, but little research has been devoted to examining the potential relevance, applicability, or usability of general technology transfer research within the specific subfield of assistive technology for individuals with disabilities (National Council on Disability, 2000).

The need for further technology transfer research is especially acute among those who are developing and attempting to make technologies, products, and devices for individuals with disabilities.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project to serve as the Center on Knowledge Translation for Assistive Technology Transfer (Center). The Center must conduct rigorous research, development, technical assistance, dissemination, and utilization activities to increase successful knowledge translation (KT) for technology transfer of products developed by NIDRR-funded technology grantees.

The Center must partner with key stakeholders such as trade and professional associations, and relevant industry representatives, and focus on no more than three of the following technology areas, which are referenced in the NIDRR Long-Range Plan, 2005–2009: Sensory, Communication, Informational Technology and Telecommunications, and Environmental Access.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Improved understanding of barriers to and facilitators of successful KT for technology transfer in different industries related to NIDRR's technology portfolio. The Center must contribute to this outcome by—

(1) Identifying and compiling existing research-based knowledge about barriers to and facilitators of successful KT for technology transfer; and

(2) Conducting research on barriers to and facilitators of successful KT for technology transfer related to the technology areas on which the Center focuses.

(b) Advanced knowledge of best practices in KT for technology transfer. The Center must contribute to this outcome by—

(1) Identifying existing models, methods, or measures of KT for technology transfer in different industries related to NIDRR's technology portfolio;

(2) Further developing and testing models, methods, or measures in the technology areas on which the Center focuses; and

(3) Establishing best technology transfer practices that can be used to effectively implement and evaluate the success of technology transfer activities in the technology areas on which the Center focuses.

(c) Increased utilization of the validated best practices for KT for technology transfer. The Center must contribute to this outcome by providing training and technical assistance to NIDRR-funded technology grantees to implement and evaluate the success of such practices.

Priority 8—Asset Accumulation and Economic Self-Sufficiency for Individuals With Disabilities

Background

The availability of savings and assets are important to all individuals because they promote and allow investment in long-term goals such as education and home ownership. Savings and assets are also associated with increased household stability, community involvement, political participation, and self-sufficiency in the general population (Abt Associates, 2000).

For individuals with disabilities, the availability of financial savings and assets facilitates progress toward a wide range of community participation goals. Financial savings and assets can facilitate this progress in numerous ways, such as making it possible to purchase needed assistive technology (AT), make down payments on a home, modify one's home for greater accessibility, start a business, or pay for college (Putnam *et al.*, 2005). Little is known about asset accumulation patterns among individuals with disabilities. One of the few relevant studies comparing individuals with and without disabilities indicates that individuals with musculoskeletal conditions and related health difficulties have fewer assets than those without musculoskeletal conditions (Yelin, 1997). Because working-age adults with disabilities are more likely than their non-disabled counterparts to live in poverty (Weathers, 2005) and are less likely to be employed (U.S. Census Bureau, 2002), they have less opportunity to accumulate savings and other assets. However, being low-income does not preclude savings and asset accumulation (Beverly, 1997).

Research is required to generate new knowledge about both the barriers to, and facilitators of, savings and asset accumulation for individuals with disabilities. These barriers and facilitators are likely to exist at both the individual and system levels. At the individual level, the following factors have been shown to be associated with asset levels in the general population: income level, education level, employment status, marital status, motivation to save, racial and ethnic status, age, financial literacy, and maintenance of a bank account, among others (Putnam *et al.*, 2005; Beverly, 1997) . In addition, factors associated with asset accumulation that are specific to individuals with disabilities may include type of disabling condition, disability severity, and age-of-onset.

In addition to the individual-level factors described in the previous paragraph, there are also a number of barriers to, and facilitators of, asset accumulation at the system level. For example, individuals with disabilities who participate in Federal income support programs are placed under strict asset limits that preclude substantial accumulation of savings (Stapleton *et al.*, 2006) . Low employment rates among individuals with disabilities are associated with reduced access to institutionalized saving mechanisms such as pensions or payroll deductions for retirement savings accounts (Beverly, 1997) . Sub-optimal access to bank buildings and general financial services for individuals with disabilities may also reduce asset accumulation opportunities (Putnam *et al.*, 2005).

New knowledge about both the barriers to, and facilitators of, asset accumulation must be applied to the development of targeted interventions or to tailoring currently existing asset accumulation interventions to the specific needs and circumstances of individuals with disabilities. Financial literacy education, for example, could

be tailored to address the needs and circumstances of individuals with specific disabling conditions (Cook, 2007). Individual Development Accounts (*i.e.*, special bank accounts that help individuals save money for a specific purpose such as their education or the purchase of a first home) could be established for savings goals that are particularly relevant to individuals with disabilities, such as offsetting out-of-pocket expenses for health care or personal assistance services, or purchasing AT or home modifications.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project (DRRP) on Asset Accumulation and Economic Self-Sufficiency for Individuals with Disabilities. This DRRP must create new research-based knowledge to promote asset accumulation among individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge of both the barriers to, and facilitators of, asset accumulation and economic self-sufficiency for low- to moderate-income individuals with disabilities and their families. This DRRP must contribute to this outcome by focusing on the individual-level characteristics that may affect savings and asset accumulation, as well as system-level factors that include policies or programs designed to create system-level incentives or disincentives to the accumulation of assets.

(b) Improved asset accumulation outcomes and economic self-sufficiency among individuals with disabilities. The DRRP must contribute to this outcome by developing and testing no more than two interventions that capitalize on the facilitators and address the barriers to asset accumulation described in paragraph (a) of this priority. These interventions may include the tailoring of existing asset accumulation interventions to the specific needs and circumstances of individuals with disabilities.

Priority 9—Technology Transfer in Resource-Limited Environments

Background

Growth in the number of older people in the populations of the United States, Europe, Asia, and elsewhere suggest that there will be a steady increase in demand over the next several decades for a broad spectrum of assistive technology (AT) devices from hearing aids and canes to advanced wheelchairs, specially equipped automobiles, and personal communication devices. However, despite an increasing demand for AT, many individuals with disabilities still cannot access the AT devices they need (Bureau of Industry and Security, 2003).

Moreover, in developing countries, environmental constraints often affect the usability of many AT products. For example, products that are developed to enhance mobility may be affected by the lack of paved roads. Lack of maintenance and repair facilities also may affect distribution to, and usability of, technology by individuals with disabilities in many parts of the world. Distance and limited distribution networks tend to inhibit access to AT equipment and services. These constraints are particularly significant in rural areas, where farm accidents account for many disabilities, and in countries where landmine injuries affect individuals whose primary occupation is farming (Swanson, 2007).

In the United States, the U.S. Department of Agriculture has recognized the needs of farmers and ranchers with disabilities by funding the AgriAbility project, which provides training, technical assistance, and information about technology and other services through agricultural extension services. NIDRR has also funded research projects to examine service delivery needs for farmers with disabilities. While NIDRR and other Federal agencies have funded successful projects in this area, and although these projects have resulted in the development of low-tech products for use by individuals with disabilities in the United States and in international settings, there is still a persistent need to develop methods of moving new technologies into practice in settings where resources may be scarce.

Many barriers to implementing knowledge translation (KT) strategies for technology development also exist. The three major barriers to the acquisition of technology products in developing countries, and certain parts of the United States, are: lack of awareness of their existence or how to acquire them, lack of necessary materials to produce them, and lack of expertise needed to produce them locally (Jeserich, 2003a; Jeserich, 2003b; Ripat & Booth, 2005; Robitaille, 2003).

Several models exist to guide the development, manufacture, and distribution of low-cost, high-quality products in developing countries or economically disadvantaged areas within the United States. Each of these models highlights different aspects of product development, manufacturing or distribution processes. For example, in the charitable model, it is common to use regional distribution points to make products available to those who need them. Likewise, the workshop model focuses on training individuals to construct products that are needed by individuals in their community by using locally available resources, and the manufacturing model requires teaching individuals to construct products by setting up local factories and distributing the products regionally or nationally. The globalization model requires that an established company expand into a region either by establishing a factory or importing products there (Pearlman *et al.*, 2006).

None of these models, however, offers a universal solution to the challenge of

designing, developing, manufacturing, and distributing low-cost, high-quality products to individuals in developing countries or in economically disadvantaged regions of the United States. Different aspects of these models work well under different environmental conditions. Research is needed to expand our understanding of how best to foster the transfer of technology in these settings.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Technology Transfer in Resource-Limited Environments. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Increased access to, and acquisition of, high-quality, low-cost technology products by individuals with disabilities who need them. The DRRP must contribute to this outcome by conducting research to evaluate the application of various models of transferring technology products to individuals with disabilities in resource-limited environments, either in the United States or abroad. The DRRP's research must examine the relationship of factors such as type of technology, delivery system options, socio-economic conditions, and disability type, on successful transfer of needed technologies to individuals with disabilities. NIDRR is particularly concerned about providing technology to support individuals engaged in agricultural occupations due to a significant need for AT by this population.

(b) Increased awareness by individuals with disabilities of high-quality, low-cost technology products, already developed or in development, for use in resource-limited environments. The DRRP must contribute to this outcome by conducting research on methods of providing information on available products to individuals with disabilities and their caregivers in resource-limited environments in the United States, developing countries, or both. The DRRP's research must examine the relationship of factors, such as literacy rates and the availability of print, Internet, or other communication resources, as well as socioeconomic factors and disability type on effective strategies to increase awareness among individuals with disabilities in these areas.

Priority 10—Research and Knowledge Translation Center for Individuals With Disabilities and Their Families

Background

In the United States, there are approximately 20.3 million households in which at least one individual has a disability. This includes households in which at least one child under the age of 18 has a disability and those in which at least one adult has a disability. NIDRR has funded research on children with disabilities and their families (e.g., the Rehabilitation Research and Training Center on Policies Affecting Families of Children With Disabilities), as well as on adults with disabilities who are parents of children under the age of 18 (e.g., the National Resource Center for Parents with Disabilities). The family is a critical unit of analysis in both of these important research areas.

It is necessary to understand the experiences of individuals with disabilities and their families as they attempt to navigate programs and service delivery systems that are critical to their participation in society. The needs and experiences of individuals with disabilities and their families differ based on the underlying condition and age of the individual, as well as key sociodemographic characteristics and structure of the individual's family. High-quality, in-depth research on these heterogeneous needs and experiences must serve as an empirical basis for the ongoing development, delivery, and evaluation of targeted information resources for families that include an individual with a disability, whether that individual is a child or the parent of a child.

Individuals with disabilities and their families could benefit from research-based training and technical assistance resources that are designed to help them navigate relevant programs and service delivery systems more effectively (Mitchell & Sloper, 2002). These programs and service delivery systems include, but are not limited to, childcare, family law, long-term care, and health care programs and services. Accordingly, NIDRR seeks to fund a center that will translate existing research-based knowledge about these complex programs and service delivery systems to ensure that such resources are available to individuals with disabilities and their families. Additional work in this area will help promote the achievement of one of NIDRR's primary goals, the successful dissemination of research-based knowledge and products for use by intended target audiences, including individuals with disabilities and their families and caregivers (NIDRR Long Range Plan, 2005–2009).

Research has been conducted on the many programs and service delivery systems that individuals with disabilities and their families must navigate. There is a need for translation of this research into materials that can be used by individuals with disabilities and their families as they make critical decisions and choices about the services that are available to them. For example, the families of children with disabilities could benefit from translation and widespread dissemination of peer-reviewed research on child care services (Devore & Bowers, 2006), respite and related support services (McGill, Papachristoforou, & Cooper, 2006), and effectively meeting the complex health care needs of children with disabilities

in the community (American Academy of Pediatrics, 2005).

In addition, adults with disabilities who are parents may come into contact with components of the complex family law system that often assume that disability precludes effective parenting (Kirshbaum & Olkin, 2002). These components of the family law system include statutes and case law related to custody, adoption, and divorce. Translation of legal research on parenting with a disability (Odegard, 1993) may be useful to parents with disabilities and their families. Parents with physical disabilities also would benefit from translation of research on baby care adaptations (Tuleja & DeMoss, 1999), as well as research on the more general experiences of parents with disabilities (Wade, Mildon, & Matthews, 2007; Conley-Jung & Olkin, 2001).

Families that include one or more individuals with disabilities must often make decisions about an array of options for providing and financing the long-term services and supports that are necessary to help the family member live and participate in the community. Research on the effectiveness of various service delivery models (Hagglund, Clark, Farmer, & Sherman, 2004; Benjamin, Matthias, & Franke, 2000) could be translated into information that helps individuals with disabilities and their families make critical long-term care decisions.

Regardless of the age of the family member with a disability, working within the health care system to receive needed services is important to maintaining health, function, and high levels of participation in the community. The translation of peer-reviewed research on health promotion programs (Ravesloot, Seekins, Cahill, Lindgren, & Nary, 2006), health care coordination programs (Palsbo, Mastal, & O'Donnell, 2006), and preventive care (Smeltzer, 2006) are likely to be useful to individuals and their families as they make decisions about their health and well being.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as the Research and Knowledge Translation Center for Individuals with Disabilities and Their Families (Center). The Center must conduct research on the experiences and knowledge needs of individuals with disabilities and their families, and translate these findings into training, technical assistance, and informational resources.

The Center must focus on the knowledge needs of families that include a child with a disability, an adult with a disability who is a parent of at least one child under the age of eighteen, or both.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Increased knowledge about the experiences and information needs of individuals with disabilities and their families, and how those experiences and needs differ by variables such as condition type, severity, and age, as well as key characteristics of other family members and the overall structure of the family. The Center must contribute to this outcome by synthesizing existing research and advancing the knowledge base through the collection and analysis of data about the experiences and knowledge needs of families that include one or more individuals with a disability. Through this research and analysis, the Center must examine the extent to which the needs of individuals with disabilities and their families are being met by the programs and service systems that are critical to their community integration and participation (e.g., statutes and case law related to custody, adoption, and divorce; health care; long-term care; assistive technology provision programs; child care; transportation; and a wide variety of related social support services).

(b) Improved participation and community integration of individuals with disabilities. The Center must contribute to this outcome by developing, implementing, and evaluating research-based training, technical assistance, and informational resources that are targeted to the specific knowledge needs of individuals with disabilities and their families, as those needs are identified through the research activities described in paragraph (a) of this priority, or other research-based knowledge.

In addition, the Center must coordinate with relevant NIDRR Knowledge Translation grantees to develop and implement a method for identifying high-quality, research-based information for dissemination to individuals with disabilities and their families.

Rehabilitation Research and Training Centers (RRTCs)

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for individuals with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority 11—General Rehabilitation Research and Training Center (RRTC) Requirements

Background

NIDRR proposes the following *General RRTC Requirements* priority because it believes that the effectiveness of any RRTC depends on, among other things, how well the RRTC coordinates its research efforts with the research of other NIDRR-funded projects, involves individuals with disabilities in its activities, and identifies specific anticipated outcomes that are linked to its objectives in applying for RRTC funding. Accordingly, NIDRR intends to use proposed *Priority 11—General RRTC Requirements* in conjunction with each of the other RRTC priorities proposed in this notice (i.e., priorities 12 through 21).

Proposed Priority

To meet this priority, the Rehabilitation Research and Training Center (RRTC) must—

(a) Conduct a state-of-the-science conference on its respective area of research by the fourth year of the grant cycle and publish a comprehensive report on the final outcomes of the conference by the end of the fourth year of the grant cycle. This conference must include materials from the experts internal and external to the RRTC;

(b) Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;

(c) Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC; and

(d) Coordinate with the appropriate NIDRR-funded Knowledge Translation Centers and professional and consumer organizations, to provide scientific results and information for dissemination to policymakers, service providers, researchers, and others.

Priority 12—Enhancing the Health and Wellness of Persons With Neuromuscular Diseases

Background

The term ''muscular dystrophy'' is used to refer to the more than 40 neuromuscular diseases (NMDs). The Muscular Dystrophies are currently classified in nine types (Myotonic, Duchenne, Becker, Limb-Girdle, Facioscapulohumeral, Congenital, Oculopharyngeal, Distal and Emery-Dreifuss), and some of these are categorized into further subtypes. NMDs affect individuals of both sexes at every stage of life: infancy, adolescence, adulthood, and old age. Their effects range from gradual loss of mobility and independence to severe disability and death. The most common NMD is Duchenne/Becker Muscular Dystrophy (DBMD). DBMD affects approximately 1 out of every 3,500 to 5,000 boys (Single Gene Disorders and Disability, 2006).

Individuals with NMDs face health, psychosocial, and economic problems that negatively affect their overall health and well-being, as reported at the National Institutes of Health (NIH) ''Burden of Muscle Disease Workshop,'' hosted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) and the NIH Office of Rare Diseases on January 26–27, 2005 (Burden of Muscle Disease Workshop, 2005). Neuromuscular diseases may contribute to significant health problems because of muscle weakness, difficulty with exercise, fatigue, poor endurance, weight problems (e.g., obesity), pulmonary complications and associated sleep disorders. Research is needed to generate new knowledge about secondary conditions of NMD that are not as well understood—such as pain, reduced bone content, and metabolic complications.

Exercise and nutrition have been a focus of rehabilitation interventions because they are key factors in successful participation in health and wellness programs for individuals with NMDs (Kilmer, 2002). However, due to the loss of functional muscle tissue from NMDs, few studies have examined the response of individuals with NMDs to cardiopulmonary testing and aerobic exercise training (McDonald, 2005). In order to facilitate high-quality research in the areas of cardiopulmonary testing and aerobic exercise training, the capacity to measure physical, functional, and social participation outcomes must be enhanced (Muscular Dystrophy Coordinating Committee Report, 2005) through the development of new outcome measures, or validation of existing measures in populations of individuals with NMD.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Health and Wellness of Persons with Neuromuscular Diseases (NMDs). This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: Prevention or reduction of secondary conditions (e.g., pain, fatigue, muscle weakness, associated sleep disorders, metabolic complications); improved mobility; emotional well-being; and access to community-based health promotion services and programs (e.g., fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals with NMDs. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions, replicating promising practices or programs, or both.

Priority 13—Enhancing the Health and Wellness of Individuals With Arthritis

Background

Approximately 60 million adults in United States will have arthritis by the year 2020. Currently, approximately 21 million individuals have osteoarthritis, and another 2.1 million have rheumatoid arthritis (National Arthritis Action Plan, 1999). Arthritis is the leading cause of disability in the United States for individuals 15 years of age and older, potentially limiting affected persons from walking a few blocks or climbing a flight of stairs (Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, (2007)). Arthritis is also the second leading cause of work-related disability in the United States (Cakmak & Bolukbas, 2005).

Arthritis impacts an individual physically, emotionally, and socially and is characterized by several factors such as pain, inflammation, damage to joint tissue, decreased mobility, fatigue, stress, and depression. Developing interventions to alleviate arthritis pain and functional limitations that are associated with arthritis are particularly important. Exercise is an essential tool in managing arthritis pain and stiffness and in improving mobility. Muscle strength training is considered to be an important cornerstone of non-pharmacological treatment for individuals with arthritis (Hakkinen, 2004). However, the rates of participation in regular exercise are lower among individuals with arthritis than those without arthritis (Barclay, 2006).

Arthritis also can lead to diminished enjoyment of, and participation in, daily activities and community-based programs (*e.g.*, going to church and socializing), which in turn can contribute to feelings of isolation and depression. A depression management program consisting of coordination of medications and counseling can reduce both depression and arthritis pain and disability in older adults (Lin *et al.*, 2003).

Outcome measures are required to assess the effectiveness of specific interventions to reduce the physical, functional, emotional, and social sequelae of arthritis. While arthritis researchers have access to effective measures of disease status, physical and functional abilities, and quality of life, measures of social participation for this population are less well developed (Backman, 2006). Research is required to fill this gap in outcome measures through the development of arthritis-specific measures of participation, or the validation of existing measures of participation that have been developed for other subpopulations of individuals with disabilities (Whiteneck *et al.,* 1992).

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Health and Wellness of Individuals with Arthritis. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: prevention or reduction of secondary conditions (*e.g.*, pain, fatigue, depression); improved mobility; emotional well-being; and access to community-based health promotion services and programs (*e.g.*, fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with persons with arthritis. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions, replicating promising practices or programs, or both.

Priority 14—Stroke Rehabilitation

Background

Approximately 730,000 individuals experience strokes in the United States each year. Nearly five million individuals in the United States today have survived a stroke. Stroke patients continue to be the largest diagnostic group in medical rehabilitation, and stroke is often associated with high levels of disability (American Heart Association, 2006).

With the help of new technologies, significant progress has been made in the development of rehabilitation

interventions and in the assessment of outcomes for those who have experienced a stroke. Examples of recent advances in rehabilitation interventions and outcomes assessment include the Extremity Constraint-Induced Therapy Evaluation (EXCITE), a repetitive training of upper extremities on task-oriented activities that enhances functional abilities of stroke survivors 3 to 9 months after stroke (Wolf *et al.*, 2006; Messe & Cucchiara, 2006). A novel and promising technology, the BION, is an implantable neuromuscular stimulation device to treat complications of paralysis and disuse atrophy, including shoulder subluxation, hand contractures, drop foot, and osteoarthritis (Loeb *et al.*, 2006).

Given the large and growing incidence of stroke in the United States and the high levels of physical and cognitive disability often associated with stroke, there is a need for further research on promising new interventions, such as constraint-induced (CI) therapy, bodyweight-supported treadmill training (BWS–TT), electrical stimulation, and robotic technology (Bassett, 2006). In addition, research is needed to develop more sensitive measures of neuro-recovery and post-stroke secondary health conditions, as well as to develop interventions to prevent a variety of post-stroke secondary health conditions such as fatigue (Gladstone *et al.*, 2002; Roth, 2005).

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Stroke Rehabilitation. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: prevention or reduction of secondary conditions (e.g., pain, fatigue, depression); improved mobility; emotional well-being; and access to community-based health promotion services and programs (e.g., fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with persons with stroke. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions, replicating promising practices or programs, or both.

Priority 15—Personal Assistance Services (PAS) in the 21st Century

Background

In 2005, health-related problems resulted in about 3.8 million adults needing help from another person with personal care activities, and about 7.8 million adults requiring help from another person with daily activities, such as household chores or shopping. Among adults ages 75 and over, a rapidly growing population, about 10 percent required help with personal care and 19 percent required help with daily activities (Adams, Dey, & Vickerie, 2005; Population Projections Branch, 2004). Most personal assistance services (PAS) are provided by unpaid caregivers such as family members or friends; in 2004, over 44 million adults provided help with care to an adult family member or friend (Naiditch & Wasan, 2006). However, paid personal and home care aides held only about 701,000 jobs in 2004 (Bureau of Labor Statistics (BLS), U.S. Department of Labor (DOL), 2006).

The demand for personal and home care aides is expected to increase greatly over the next 10 years because of the aging of the U.S. population (BLS, DOL, 2006). The expected increase in demand is especially troubling because a labor shortage crisis in the available pool of caregivers already exists. This labor shortage crisis has ''potentially negative consequences for quality of care and quality of life'' for individuals requiring personal and home care (Stone & Wiener, 2001). In addition, many unpaid caregivers themselves are aging and face their own ''considerable personal toll—physically, mentally, emotionally, and financially, and in terms of retirement insecurity, lost jobs or other missed opportunities'' (Miller & Mor, 2006). Finally, the need for an improved network of PAS providers extends beyond day-to-day activities; there is also an emerging need for PAS providers during emergencies and disaster situations (National Council on Disability, 2006).

The cost of PAS can be covered by a variety of sources, depending on a person's income and the type of services provided. For example, individuals with disabilities who work and receive Supplemental Security Income (SSI) benefits may deduct PAS performed in an employment setting or in preparing for, or traveling to or from, the workplace as an Impairment-Related Work Expense. This deduction is used to calculate available income and ultimately the amount of a person's SSI cash benefit (Social Security Administration, 2006). While the loss of such benefits has frequently been seen as a hindrance to securing or maintaining employment, there is little research on the economic impact of covering PAS costs for adults who are working and not eligible for public assistance. A study of elderly adults with disabilities also suggests that the use of assistive technology by an individual with disabilities reduces the number of PAS hours required for that individual (Hoenig, Taylor, & Sloan, 2003). However, there has been little research on the relationship between the use of AT by working-age adults with disabilities and the number of PAS hours required by those individuals.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Personal Assistance Services (PAS) in the 21st Century. This RRTC must conduct rigorous research, develop interventions, and provide training that address future demands for PAS and caregiving. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved access to PAS by individuals with disabilities. The RRTC must contribute to this outcome by: (1) Analyzing and describing trends and needs of the population of PAS consumers; (2) identifying gaps in programs and services; (3) developing effective evidence-based interventions to address unmet needs for PAS; and (4) proposing strategies to coordinate and secure PAS services during emergencies.

(b) A larger and better prepared paid and unpaid PAS workforce. The RRTC must contribute to this outcome by: (1) Developing tools and supports for unpaid caregivers that reflect the changing needs of caregivers as they age; (2) developing strategies that lead to a PAS workforce that is geographically diverse and that maximizes workforce recruitment, retention, compensation and benefits, professional training, development, and networking; and (3) identifying and evaluating interventions and labor resources, such as job training services, that help to improve workforce capacity of PAS providers.

(c) An understanding of the complexity of the economics of PAS. The RRTC must contribute to this outcome by: (1) Analyzing the interrelationship between the use of assistive technology, employment supports, and PAS; and (2) analyzing the role of tax laws that affect reimbursement for PAS.

Priority 16—Participation and Community Living for Individuals With Psychiatric Disabilities

Background

Individuals with psychiatric disabilities have one of the lowest rates of employment of any disability group—only 1 in 3 individuals with psychiatric disabilities is employed (Kaye, 2002). They also comprise the largest diagnostic category of working-aged adults receiving Supplemental Security Income or Social Security Disability Insurance (McAlpine and Warner, 2001).

In addition, individuals with psychiatric disabilities constitute a large proportion of the homeless population. Of 2 million adults experiencing an episode of homelessness, for example, 46 percent have a psychiatric disability (Burt, 2001).

In April 2002, the President signed Executive Order 13263, establishing a New Freedom Commission on Mental Health, and charged the Commission with completing a comprehensive study of the mental health service delivery system in the United States. The Commission's report, *Achieving the Promise: Transforming Mental Health Care in America*, set the course for public and private efforts across the country to improve the state of mental health care (New Freedom Commission on Mental Health, 2003). The Commission calls for a transformation of the mental health service delivery system, focusing on recovery and resilience for individuals with psychiatric disabilities. Recovery is, in part, ''the process in which people are able to live, work, learn, and participate fully in their communities,'' while resilience indicates ''the personal and community qualities that enable us to rebound from adversity, trauma, tragedy, threats, or other stresses—and to go on with life with a sense of mastery, competence, and hope'' (New Freedom Commission on Mental Health, 2003).

Being part of a community means being included, involved, and valued; it means holding social roles that are meaningful. Inclusion requires full access to opportunities and support in areas such as employment, housing, education, health and mental health care, recreation, social relationships, and other public and private sector activities. Research, including NIDRR-funded research, has advanced the knowledge base in these and other areas through a focus on recovery-oriented services, peer supports, supported education, psychiatric rehabilitation, and the avoidance of stigma. This research has led to advances in theory development, measurement tools, treatment options, and a variety of community-based supports. However, further research is needed in these areas to maximize participation and community living outcomes.

In addition, there is a strong need for research on understudied aspects of participation and community living for individuals with psychiatric disabilities. Two examples among many are emergency preparedness and mental health disparities for traditionally underserved populations (e.g., individuals from diverse racial, ethnic, linguistic, and geographic backgrounds, and individuals with multiple disabilities) (National Council on Disability, 2006; New Freedom Commission on Mental Health, 2003; U.S. Public Health Service, Office of the Surgeon General, 2001).

Finally, there is extensive documentation about the need to accelerate the incorporation of research findings in mental health service delivery so that individual lives can change as a result of the research.

According to the Institute on Medicine report, *Crossing the Quality Chasm: A New Health System for the 21st Century*, the time lag between the discovery of effective medical treatments and the incorporation into practice is 15 to 20 years. The President's New Freedom Commission on Mental Health has called for a reduction in this delay as part of an overall transformation of mental health care in America (Substance Abuse and Mental Health Services Administration, 2005; New Freedom Commission on Mental Health, 2003; Institute of Medicine, 2001).

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Participation and Community Living for Individuals with Psychiatric Disabilities. The RRTC must conduct rigorous research, training, technical assistance, and dissemination activities that contribute to improved participation and community living outcomes for individuals with psychiatric disabilities. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved individual and system capacity to maximize the meaningful involvement of individuals with psychiatric disabilities in community life. The RRTC must contribute to this outcome by:

(1) Advancing the knowledge base and application of theories, measures, methods, interventions, or a combination of those activities that facilitate participation and community living. This must include a focus on at least three of the following areas: employment, housing, education, health and mental health care, recreation, social relationships, or other public and private sector activities related to community living.

(2) Reducing disparities in service delivery and program development by including a focus on one or more of the following understudied areas: (i) Emergency preparedness for individuals with psychiatric disabilities; (ii) individuals with psychiatric disabilities from diverse racial, ethnic, linguistic, and geographic backgrounds; or (iii) individuals with psychiatric disabilities who have co-occurring sensory or physical disabilities.

(b) Increased incorporation of mental health research findings into practice or policy. The RRTC must contribute to this outcome by coordinating with appropriate NIDRR-funded knowledge translation grantees to advance or add to their work in the following areas:

(1) Developing and implementing procedures to evaluate the readiness of mental health research findings for translation into practice.

(2) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of mental health research findings.

(3) Conducting training, technical assistance, and dissemination activities to facilitate knowledge translation in the context of mental health research.

Priority 17—Multiple Sclerosis: Interventions To Maximize Health, Well-Being, and Participation

Background

Approximately 400,000 Americans have multiple sclerosis (MS), and, each week, about 200 more individuals in the United States are diagnosed with MS (National Multiple Sclerosis Society, 2005). Individuals with MS may have symptoms such as fatigue, motor weakness, spasticity, poor balance, heat sensitivity, pain, cognitive impairment, and mood disorders (Wynn, 2006; Mikol, 2006). The impact of the variety of symptoms that an individual with MS may experience and the uncertain prognosis of a given course of MS can impair an individual's routine activities; vocational, social and interpersonal functioning; and quality of life (Kalb, 2004). Treatment of MS may include: medication, rehabilitation, integrative medicine, and other interventions (Yadav *et al.*, 2006). Surveys indicate that 50 to 75 percent of individuals with MS have tried dietary changes, nutritional or herbal supplements, mind-body therapies, and similar approaches to manage MS. Interestingly, patients seem unlikely to discuss these types of strategies with their neurologists (Yadav *et al.*, 2006).

While some research has been conducted regarding the functional outcomes of individuals with MS, there is a significant need for further research in the areas of outcomes measurement and rehabilitation interventions to maximize the health, well-being, and participation of individuals with MS. Providers of care who treat individuals with MS have cited their own need for clinical consultation and continuing medical education (CME) about treatment of MS-associated symptoms (Turner *et al.*, 2006). Fatigue, depression, cognitive impairment, and pain are among the most frequently cited areas for consult and CME (Mikol, 2006). Future research should address the frequent co-occurrence of these four symptoms as well as the impact of central-nervous-system-active medications used to treat them (Oken *et al.*, 2006). For individuals with MS, there is a ''continued need for effective therapeutic approaches to symptom management'' (Joy & Johnston, 2001).

Recent research underscores the need for a continued focus on the role of environmental and lifestyle factors affecting individuals with MS, and also on the impact co-existing chronic health conditions have on an aging population of individuals with MS (Marrie, 2006; Buchanan *et al.*, 2006; Snook *et al.*, 2006). For example, treatment disparities and variations in disease characteristics have been found when comparing individuals with MS from rural versus urban environments (Buchanan *et al.*, 2006). There is also a strong relationship between physical inactivity and risk for obesity among individuals with MS (Snook *et al.*,

2006). In addition, a variety of autoimmune diseases ''are reported to occur more frequently than expected in patients with MS'' (Marrie, 2006). These findings support the need for further research on outcomes measurement and promotion of health and participation for individuals with MS.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Multiple Sclerosis: Interventions to Maximize Health, Well-Being, and Participation. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: prevention or reduction of secondary conditions (e.g., pain, fatigue, depression); improved mobility; emotional well-being; and access to community-based health promotion services and programs (e.g., fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with persons with MS. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions for individuals with MS, replicating promising practices or programs for individuals with MS, or both.

Priority 18—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation

Background

With medical and technological advancements, many individuals with early onset physical disabilities, acquired at birth, in childhood or young adulthood, are surviving long enough to experience the rewards and challenges of aging (Campbell, Sheets & Strong, 1999). Determining the size of this emerging segment of the disabled population has been difficult due to the lack of sufficient population data on age of onset and duration of disability (Kemp, 2005). The only national estimate available to date comes from a secondary analysis of the 1990 U.S. Census data, which suggests that there may be as many as 25,000,000 Americans who are aging with various long-term disabilities (McNeil, 1994).

As many researchers have documented, a primary challenge associated with increased longevity among this population is an increased risk of ''secondary conditions.'' The term secondary conditions, or secondary health conditions, is shorthand for the various types of medical and functional problems that individuals with long-term physical disabilities experience post-onset as they age (Kemp & Mosqueda, 2004). Although there is widespread agreement that secondary conditions can be debilitating, costly in terms of financial and social consequences, and potentially fatal in some circumstances, how to define secondary conditions remains an active debate within the disability community (Wilber *et al.*, 2002; Rimmer, 2005).

While a precise definition of secondary conditions is still evolving, the emerging consensus is that secondary conditions often increase the severity of an individual's disability (Brandt & Pope, 1997). As individuals with long-term physical disabilities age into middle and later adulthood, there is an enormous physical and psychological burden associated with having to manage various secondary health conditions, in addition to managing the chronic health effects related to the aging process generally (Rimmer, 2005). There is, however, widespread agreement that certain secondary conditions are preventable, and that learning how to prevent the onset or reduce the severity and impact of these new or increased impairments, functional limitations, and age-related health problems is vital to enhancing the health and participation of individuals aging with long-term disabilities (Simeonsson *et al.*, 1999; Lollar, 2002; Wilber *et al.*, 2002).

To date there are no national estimates of the number of individuals with long-term physical disabilities who are experiencing one or more types of secondary conditions. Most of what is known about the prevalence and consequences of secondary conditions for health and participation comes from clinical studies of patients, a handful of community-based studies and secondary analyses of population surveys, and the evolving theoretical understanding of the general aging process (Cristian, 2005; Kemp, 2005; Seekins *et al.*, 1994; Campbell, Sheets, & Strong, 1999; Wilber *et al.*, 2002; Verbrugge & Yang, 2002; Kinne *et al.*, 2004).

Results of these studies underscore the importance of improving treatment options to prevent or reduce the consequences of secondary conditions. Exercise, lifestyle and behavioral

changes, and psychosocial and environmental factors are acknowledged as mediators, or potential mediators, for the development of secondary health conditions (Seekins *et al.*, 1994; Wilber *et al.*, 2002; Kemp, 2005; Rimmer, 2005). However, research on these factors has been limited by the lack of measurement tools to characterize the types and severity of secondary conditions experienced by individuals aging with disabilities, and the lack of experimental and quasi-experimental studies to test the effectiveness of various intervention strategies (Wilber *et al.*; Rimmer, 2005).

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Aging with Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings and used by other researchers. The intended outcome of the RRTC is to enhance the health and participation of individuals aging with long-term physical disabilities in work and the community by advancing knowledge about the identification, assessment, treatment and improved management of the secondary conditions likely experienced by this target population.

In addressing this priority, the RRTC must propose no more than four synergistic, cross-disability research projects to address the secondary conditions that are most relevant to the health, employment, or community participation of individuals with disabilities. To ensure the feasibility of the RRTC's proposed activities and increase the likelihood of achieving planned outcomes, the RRTC must focus on no more than three discrete impairment groups, and must limit interventions strategies to no more than two of the following modalities: exercise, health promotion, psychological adaptation, life planning or self-management skills, and environmental or technological supports. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the natural course of aging with physical disability. The RRTC must contribute to this outcome by documenting the life trajectories and average age of onset of the major types of secondary conditions experienced by individuals living with long-term physical disabilities, and examining the interrelationships among different types of secondary conditions and the consequences of variations in timing of onset for health and participation.

(b) Improved tools and measures for use with individuals aging with long-term physical disabilities. The RRTC must contribute to this outcome by identifying, developing or modifying, and testing new measurement tools that improve the identification and assessment of the major types of secondary conditions discussed in the literature, as well as the outcomes of interventions designed to prevent or reduce these conditions.

(c) Improved rehabilitation or community-based interventions that enhance the health and participation in work and the community of individuals aging with physical disabilities. The RRTC must contribute to this outcome by identifying, developing, or modifying, and testing new interventions that are effective in preventing the onset or improving the management and reducing the impact of secondary conditions, and replicating promising practices or programs that are effective in preventing the onset or improving the management and reducing the impact of secondary conditions, or both.

Priority 19—Disability Statistics and Demographics

Background

A 2003 report from the Interagency Committee on Disability Research (ICDR) identified 67 Federal statutory definitions of the term ''disability.'' These definitions directly influence the collection of national, State, administrative, and other data about individuals with disabilities (Cherry Engineering Support Services (CSSI), Inc., 2003). ''Because surveys produce different types of information on disability, they can provide additional perspectives on the sources and effects of disabilities, but they can also cause confusion because of the differences in the way disability is being measured'' (Government Accountability Office, 2006). As a result of such confusion, policymakers, service providers, individuals with disabilities, and others may not be able to identify the best available statistics to inform their efforts to enhance the well-being and participation of individuals with disabilities.

An ongoing need exists to bridge the gap between producers and users of disability statistics, particularly as the

population ages and injuries caused by such factors as war and environmental changes lead to growing numbers of individuals with disabilities (National Council on Disability (NCD), 2006). Policymakers cite the need for information about the indirect and direct costs of disability, unmet needs for services or technologies that facilitate environmental access and enhance participation, and individuals with disabilities living in institutional settings (Healthy People 2010, 2000; NCD, 2006).

Though there are a number of useful sources of disability data, ''controversy has been generated by variations in disability statistics achieved by different researchers, using varied data collection instruments, differing data sources and different data mining techniques'' (NCD, 2006). Methodological research will improve the quality and consistency of data and increase confidence in the research findings (Stern, 2004; McMenamin, Miller, & Polivka, 2006). Improved questionnaire design and innovative data collection strategies can facilitate availability of valid and reliable data (NCD, 2006; Kroll *et al.*, in press). Research to evaluate best practices for conducting surveys of and about individuals with disabilities will improve our understanding of the needs of the population. Development of methodologies to improve collections or analyses of data about populations with low-incidence disabilities, or small demographic subgroups of individuals with disabilities, would advance knowledge about the population. A recent review indicates that ''there is a solid base of theory on which to base research among low-incidence populations'' but notes the lack of ''a large body of work in which this theory has been applied to populations with disabilities'' (CESSI, 2005). For these reasons, NIDRR seeks to fund an RRTC that improves the quality of disability statistics.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Disability Statistics and Demographics. This RRTC must conduct rigorous research, knowledge translation, training, dissemination, and technical assistance that advance the use of rigorous disability statistics and demographics to inform disability policy and service provision. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Rigorous and timely demographic research to inform the development of disability policy and programs. The RRTC must contribute to this outcome by: (1) Producing meta-analyses of national, State, and administrative data that address critical program and service needs; and (2) providing statistical consultation, including specialized analyses, to facilitate the use of survey and administrative data by policymakers and others.

(b) Improved disability data and statistics. The RRTC must conduct research about methodologies that advance the practice for (1) Conducting surveys of individuals with disabilities, including individuals with low-prevalence disabilities; (2) analyzing data about low-incidence populations of individuals with disabilities; and (3) other issues related to survey or administrative data.

(c) Effective use of disability statistics and demographic information. The RRTC must contribute to this outcome by: (1) Serving as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and (2) transferring research findings to enhance planning, policymaking, program administration, and delivery of services to individuals with disabilities.

Priorities 20 and 21—Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities (Priority 20) and Participation and Community Living for Individuals With Intellectual and Developmental Disabilities (Priority 21)

Background

For purposes of priorities 20 and 21, individuals with intellectual, developmental, mental, and cognitive disabilities, including individuals with cerebral palsy, Downs syndrome, autism, and related conditions, will be referred to as persons with intellectual disabilities or developmental disabilities (ID/DD). Individuals are considered to have an intellectual disability (ID) when their intellectual functioning level (IQ) is below 70–75; they have significant limitations in conceptual, social, and practical adaptive skills such as communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work; and the disability originated before the age of 18. Developmental disabilities (DD) are defined as severe, chronic disabilities that first appear before age 22, are likely to continue indefinitely, and cause substantial limitations in three or more of the following areas: Self-care, language, learning, mobility, self-direction, and capacity for independent living. These definitions of ID and DD, however, may have limitations when applied in research or in the administration of public assistance programs because of diagnostic ambiguities, implementation and measurement problems, or the temporary nature of certain context-specific disabilities (Larson *et al.*, 2001).

Individuals with ID/DD constitute a diverse group of underserved, underemployed or unemployed, and marginalized individuals. While estimates about the size and composition of this population in the United States range from 1.6 percent to nearly 3 percent of the population (between 4.5 million and 8 million), depending on the source of data and the types of diagnoses used, clear patterns

of disadvantage are apparent in this population (Lakin & Turnbull, 2005; National Institute of Child Health and Human Development, 2002; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2006).

According to a 2004 report issued by the President's Committee for People with Intellectual Disabilities (2004), around 90 percent of adults with ID/DD were not employed. Among those individuals with ID/DD who were employed, over 365,000 attended sheltered workshops or were in day programs or prevocational services. Levels of educational attainment are quite low for individuals with ID/DD. According to the 2004 report, 26 percent of youth with ID/DD dropped out of school, and fewer than 15 percent participated in postsecondary education. Levels of income and wealth are also low among individuals with ID/DD. Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) were a major source of income for individuals with ID/DD (in December 2001, there were almost 1.1 million adults and children receiving SSI payments based on ID/DD; there were almost 600,000 receiving SSDI benefits). Over 700,000 individuals with ID/DD lived with parents aged 60 or older. Less than one percent of individuals with ID/DD owned their own home (President's Committee for People with Intellectual Disabilities, 2004).

These statistics provide a small glimpse into the everyday life experiences of individuals with ID/DD and their families and caregivers. Depending on the severity of their disability, individuals with ID/DD need assistance in most, if not all, activities of daily living (e.g., walking, dressing, bathing) and instrumental activities of daily living (e.g., shopping or managing money). Such assistance is time consuming and costly, particularly if skilled personal assistance services and professional rehabilitation services are needed.

Besides needing significant amounts of care, many individuals with ID/DD are at an increased risk of being isolated from the community, particularly if they have been placed under institutional supervision or care. Limited educational attainment and job skills are key barriers to inclusion in communal activities. As a result, many individuals with ID/DD have difficulties developing independent living and social skills. They remain dependent on family, friends, and personal caregivers. Where such supports are not available, they must resort to institutional care.

Individuals with ID/DD have been found to suffer from a wide range of illnesses and impairments (National Institute of Child Health and Human Development, 2002). The onset of many conditions is at birth or in infancy (for example, cerebral palsy). Moreover, many other conditions, such as obesity, diabetes, or Alzheimer's disease occur earlier in adulthood for individuals with ID/DD than most individuals in the general population. As a result, individuals with ID/DD have greater needs for health care services than members of the general population. To obtain the full benefits of these services, the individuals must have access to skilled staff at service facilities who are informed about, and equipped to respond to, the special needs of individuals with ID/DD. If skilled staff are not available, consumers and providers may consider the help of intermediaries, direct support providers, or other social service providers specializing in the care of individuals with ID/DD.

For these reasons, NIDRR seeks to fund two RRTCs designed to increase the levels of health, function, and community living/participation of individuals with ID/DD by developing and applying scientifically validated procedures, treatments, and interventions. The goal of these procedures, treatments, and interventions is to create measurable benefits or outcomes for individuals with ID/DD and their families and caregivers.

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Proposed Priority 20—Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Health and Function Across the Lifespan of Individuals with Intellectual and Developmental Disabilities (ID/DD). This RRTC must focus on rigorous research, training, technical assistance, and dissemination of strategies and interventions that improve the health and function of individuals with ID/DD, and access to community-based health and social services by individuals with ID/DD. The research conducted by this RRTC also must focus on improving the health and function of individuals with ID/DD and on promoting family and caregiver supports that enable persons with ID/DD to receive long-term care.

When applying for a grant under this priority, an applicant must identify, in its application, the subjects of interest from the diverse population of individuals with ID/DD to be served by the proposed research and describe how the proposed research will benefit this group.

Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Conceptually sound theories and methodologies for research on community-based rehabilitation and health and social service provision, including research on long-term care or care provided by family members to individuals with ID/DD. The RRTC must contribute to this outcome by investigating existing theories that may help organize or frame research on ID/DD, including theories from fields such as long-term care, or frameworks related to delivery of rehabilitation or health services in the community.

(b) Improved instruments and measures that help to evaluate the suitability and quality of personal assistance services, and the effectiveness and efficiency of community-based health and social services for individuals with ID/DD. The RRTC must contribute to this outcome by assessing current measures and instruments, reporting on their validity

and reliability, and then developing and testing improved measures as needed.

(c) Improved rehabilitation or community-based interventions that demonstrate measurable reductions in barriers to access and utilization of community-based services or community-based interventions that otherwise contribute to improved health and function of individuals with ID/DD. The RRTC must contribute to this outcome by identifying and testing potential interventions and providing a thorough assessment of the basis on which these interventions were selected, including any preliminary evidence of their usefulness and relevance to individuals with ID/DD and their families.

Proposed Priority 21—Participation and Community Living for Individuals With Intellectual and Developmental Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) for Participation and Community Living for Individuals with Intellectual and Developmental Disabilities (ID/DD). The RRTC must focus on rigorous research, training, technical assistance, and dissemination to enhance inclusion and self-determination of individuals with ID/DD. This RRTC also must focus on developing interventions that support self-determination, informed choice, consumer control, family involvement, and participation and community living of individuals with ID/DD.

When applying for a grant under this priority, an applicant must identify, in its application, the subjects of interest from the diverse population of individuals with ID/DD to be served by the proposed research and describe how the proposed research will benefit this group.

Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved concepts and theories of societal participation and community living, and self-determination to guide the study of needs and abilities of individuals with ID/DD. The RRTC must contribute to this outcome by investigating existing theories of societal participation, community living, and self-determination to frame research on these topics for individuals with ID/DD.

(b) Improved instruments and measures of participation and community living to assess the type, frequency, and quality of activities that individuals with ID/DD wish to engage in, or are able to engage in outside the home or residential facility. The RRTC must contribute to this outcome by assessing current measures and instruments used to determine outcomes in the areas of access to community facilities, social participation, self advocacy, employment choice, and housing selection by individuals with ID/DD, reporting on the validity and reliability of these measures, and then developing and testing improved measures as needed.

(c) Improved rehabilitation or community-based interventions that demonstrate a measurable impact in areas such as access to communal facilities and events, social participation and interaction with members of the community, self-advocacy, employment opportunities, and housing choices. The RRTC must contribute to this outcome by identifying and testing potential interventions for individuals with ID/DD, providing a thorough assessment of the basis on which these interventions were selected, including any preliminary evidence of their usefulness and relevance to individuals with ID/DD and their families.

Rehabilitation Engineering Research Centers Program General Requirements of Rehabilitation Engineering Research Centers (RERCs)

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to: (a) Solve rehabilitation problems and remove environmental barriers; and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating: (a) Innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and
- Facilitating service delivery systems change through: (a) The development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by or in collaboration with one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html*.

Priorities 22, 23, 24, 25, 26, and 27—Rehabilitation Engineering Research Centers (RERCs) for Hearing Enhancement (Priority 22), Accessible Public Transportation (Priority 23), Prosthetics and Orthotics (Priority 24), Communication Enhancement (Priority 25), Universal Interface and Information Technology Access (Priority 26), and Wheeled Mobility (Priority 27)

Background

Individuals with disabilities regularly use products that have been developed as the result of rehabilitation and biomedical research in order to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. Rehabilitation engineering research encompasses research on assistive technology, technology at the systems level (*e.g.*, the built environment, transportation), and technology that allows individuals to interface with technology at the systems or environmental levels.

Advancements in basic biomedical science and technology have resulted in new opportunities to enhance further the lives of individuals with disabilities. Specifically, recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro mechanical systems (MEMS), sensor technologies, and the neurosciences provide a wealth of opportunities for individuals with disabilities and could be incorporated into research focused on disability and rehabilitation.

Through the following proposed priorities, NIDRR intends to fund RERCs that advance rehabilitation engineering research in the following priority research areas: Hearing Enhancement, Accessible Public Transportation, Prosthetics and Orthotics, Communication Enhancement, Universal Interface and Information

Technology Access, and Wheeled Mobility.

Priority 22—Hearing Enhancement

Approximately 28.6 million Americans have an auditory disorder. In the United States, an estimated 1 to 6 in 1,000 newborns are born profoundly deaf, and another 2 to 3 out of 1,000 babies are born with partial hearing loss, making hearing loss the number one birth defect in America (Kochkin, 2001; Kemper & Downs, 2000; Cunningham & Cox, 2003).

Despite advances in hearing assistive technologies such as digital hearing aids, cochlear implants, induction loop (IL), frequency modulation (FM) and infrared (IR) assistive listening systems, and video relay, many challenges and opportunities for future research and development exist (Stika, Ross, & Cuevas, 2002; Schow *et al.*, 1993). For example, there is a need for new fitting methods for hearing aids and cochlear implants that adaptively adjust signal processing parameters such as compression threshold, compression ratio, gain, and frequency to maximize performance goals for an individual, both in the clinic and in the field (Stika, Ross & Cuevas, 2002; Schow, Balsara, Smedley & Whitcomb, 1993). In addition, there is a need to explore how rehabilitation or training can be provided so that individual users of hearing enhancement technologies can readily adopt new technologies and adapt to the new stimulation and information being received (Schow *et al.*, 1993).

Accordingly, NIDRR seeks to fund an RERC that researches and develops innovative models of aural rehabilitation tools, services, and training, in order to improve assessment and fitting of hearing enhancement technologies and to increase the availability, knowledge, and use of hearing enhancement devices and services.

References

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Priority 23—Accessible Public Transportation

Inaccessible transportation is a major barrier to independent living and limits the ability of individuals with disabilities to participate fully in their communities. One-third of individuals with disabilities report that inadequate transportation is a significant problem, and they are twice as likely to have inadequate transportation than individuals without disabilities (N.O.D./Harris Survey, 2004). Addressing the problems of accessibility of public transportation may help to provide the same degree of convenience, connection, and safety the general public enjoys when traveling via plane, train, or bus.

Points of entry and exit, public rights-of-way, communications, and bus and rail stations and stops are just a few of the areas posing transportation accessibility problems for individuals with disabilities. The physical dimensions and space limitations of the transport vehicle may prohibit easy entry, transfer to vehicle seats, or use of the services and facilities available on a plane, train, or bus. In addition, costs, physical ability, and perceptions of safety are all considered barriers to public transportation (Peck & Hess, 2006).

Accordingly, NIDRR seeks to fund an RERC on Accessible Public Transportation to address the need for improvements in the accessibility of public transportation, provide safe and dignified travel for individuals with disabilities, and increase community participation by individuals with disabilities. The focus of this RERC is on travel via air, rail, and bus.

References

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Priority 24—Prosthetics and Orthotics

In the United States, it is estimated that there are 1.2 to 1.9 million individuals living with limb loss (Adams, Hendershot, & Marano, 1999). In addition, it is estimated that 75 percent of individuals with limb loss use a prosthetic device (Nielsen, 2002). The majority of amputations are generally the result of peripheral vascular disease. Cancer, congenital limb loss, and trauma are the other major causes of amputation. It is difficult to accurately estimate orthotic use in the United States, because orthotics are used by many different pathology populations (stroke, spinal cord injury, cerebral palsy, orthopedic impairment) and orthoses are not often used on a permanent basis.

Increased knowledge and understanding about prosthetics and orthotics, and a greater emphasis on objective measures, such as performance, efficacy, and energy expenditures, that inform clinical practice should lead to the development of new concepts and devices to improve the quality, cost-effectiveness, and delivery of prosthetic and orthotic fittings.

Accordingly, NIDRR seeks to fund an RERC that researches and develops innovative prosthetic and orthotic technologies and designs to enhance the ability of individuals with limb loss and impaired limb function to perform activities of daily living, to have expanded employment options, to participate in sports and leisure activities, and to improve their health and participation outcomes.

References

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Priority 25—Communication Enhancement

''Approximately 1.3 percent of all individuals [in the United States] (*i.e.*, more than 3.5 million Americans) have such significant communication disabilities that they cannot rely on their natural speech to meet their daily communication needs.'' (Beukelman, 2005). For these individuals, augmentative and alternative communication (AAC) strategies would facilitate participation and independence.

The number of individuals who may benefit from AAC will continue to grow as the American population ages and the associated prevalence of acquired communication disorders increases. Also, improvements in medical practices and technologies have resulted in increased survival rates among at risk infants and children, which, in turn, has

led to an increase in the number of individuals with moderate to severe disabilities (Hack *et al.*, 2005). In addition, the prevalence of autism spectrum disorders (ASD) has increased and more individuals with ASD and their caregivers are actively seeking, and expecting to find, intervention services that include AAC (Blackstone, 2005).

Accordingly, NIDRR seeks to fund an RERC that enhances communication for individuals with communication disabilities, promotes greater participation of individuals with communication disabilities in employment and education, increases independence for these individuals, and researches and develops innovative technologies and techniques to improve the state of the science and usability of AAC technology.

References

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Hack, M., Taylor, H., Drotar, D., Schluchter, M., Cartar, L., Andreias, L., Wilson-Costello, D., & Klein, N. (2005). Chronic Conditions, Functional Limitations, and Special Health Care Needs of School-Aged Children Born with Extra Low Birth Weight in the 1990's. Journal of the American Medical Association (JAMA), 294(3), 318–325.

Priority 26—Universal Interface and Information Technology Access

Information technologies have the potential to provide or increase access to professional, educational, social, and economic resources among individuals with disabilities (Gorski & Clark, 2002). Unfortunately, large discrepancies in the rates of use of information technologies exist between individuals with and without disabilities. According to data collected by the Bureau of Labor Statistics and the U.S. Census, 57.6 percent and 54.4 percent of individuals without disabilities use a computer at home and access the Internet at home, respectively. These same data suggest that only 30.2 percent and 26.4 percent of individuals with disabilities use a computer at home and access the Internet at home, respectively. In addition, while 63.6 percent of individuals without disabilities access the Internet at some location, only 30.8 percent of individuals with disabilities do so (Dobransky & Hargittai, 2006).

Information technology access development efforts are utilizing V2 Information Technology Access Interface standards to build and test new universally designed interfaces that accommodate individuals with and without disabilities (International Committee for Information Technology Standards, 2006). These ''smart devices'' would automatically offer the user the appropriate interface and adapt to the way in which the user interacts with it (Horn & West, 2005).

Despite the promise of a universally designed information technology (IT) interface or device, most currently existing IT devices still need to be retrofitted with customized input and output interfaces so individuals with disabilities can use them. Further research on the effectiveness of existing alternative input and output interfaces and the design specifications necessary to construct universally designed IT interfaces and devices of the future is needed.

Accordingly, NIDRR seeks to fund an RERC that enhances the effectiveness of currently available input and output IT interfaces and devices used by individuals with varying disabilities to facilitate community participation and independent living.

References

Dobransky, K. & Hargittai, E. (2006). The disability divide in Internet access and use. Information, Communication & Society. 9(3), 313–334.

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Horn, P. & West, F. (2005). Introduction. IBM systems Journal. 44(3), 1–2.

International Committee for Information Technology Standards (2006). V2—Information Technology Access Interfaces. Gaithersburg, MD: National Institute of Standards and Technology. See: *http://v2.incits.org/*.

Priority 27—Wheeled Mobility

Among the United States population of individuals aged 15 years and older, 2.7 million individuals use a wheelchair or similar device (2002 SIPP data cited in Steinmetz, 2006). As more individuals with disabilities advance in age and as more aging individuals acquire disabilities, the number of wheeled-mobility device users will increase (White House Conference on Aging, 2005). Addressing the needs of this diverse population requires engineering and related fields to develop new solutions to existing problems and provide innovation and advancement in wheeled mobility.

Despite advances in knowledge in wheelchair propulsion technique, secondary injury prevention, wheelchair-user interface, and wheelchair skills training, many challenges and opportunities for future research and development exist. For example, over-use injuries resulting from long-term wheelchair use are still a major problem (Arthanat & Strobel, 2006; Van der Woude, de Groot, & Janssen, 2006; Van der Woude, Janssen, & Vegger, 2005). In addition, there is a need for more information on the ergonomics of wheelchair and scooter design and use within and across different environments (e.g., work, home, school, and outdoors) (Arthanat & Strobel, 2006; Van der Woude, de Groot, & Janssen, 2006).

Advances in wheelchair technology may provide users with greater functional potential, including increases in participation and activity, and decreases in secondary injuries, such as pressure sores and repetitive strain injuries. Accordingly, NIDRR seeks to fund an RERC that improves understanding of the ergonomics, design, development, testing, and use of wheelchairs and scooters within and across different environments.

References

Arthanat, S. & Strobel, W. (2006). Wheelchair ergonomics: Implications for vocational participation. Journal of Vocational Rehabilitation, 24, 97–109.

Steinmetz, E. (2006). Current Population Reports: Americans with Disabilities 2002. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau. See: *http://www.census.gov/prod/2006pubs/p70–107.pdf*.

Van der Woude, L.H., de Groot, S., & Janssen, T.W.J. (2006). Manual wheelchairs: Research and innovation in rehabilitation, sports, daily life and health. Medical Engineering & Physics, 28(9), 905–915.

Van der Woude, L.H., Janssen, T.W.J., & Vegger, D.J. (2005). 3rd International Congress ''Restoration of wheeled mobility in SCI rehabilitation: State of the art III'': its background. Technology and Disability, 17, 55–61.

White House Conference on Aging (2005). Final Report to the President and Congress: The Booming Dynamics of Aging: From awareness to action. See: *http://www.whcoa.gov/about/about.asp#report*.

Proposed Priorities

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following six priorities for the establishment of (a) An RERC for Hearing Enhancement (priority 22); (b) an RERC for Accessible Public Transportation (priority 23); (c) an RERC for Prosthetics and Orthotics (priority 24); (d) an RERC for Communication Enhancement (priority 25); (e) an RERC for Universal Interface and Information Technology Access (priority 26); and (f)

an RERC for Wheeled Mobility (priority 27). Within its designated priority research area, each RERC will focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of individuals with disabilities.

(a) *RERC for Hearing Enhancement (Priority 22).* Under this priority, the RERC must research and develop methods, systems, and technologies that will assist hearing professionals with the process of matching hearing enhancement assistive technologies to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement technologies with various environments such as school, work, recreation, and social settings.

(b) *RERC for Accessible Public Transportation (Priority 23).* Under this priority, the RERC must research and develop methods, systems, and devices that will promote and enhance the ability of individuals with disabilities to safely, comfortably, and efficiently identify destination information, board and disembark, and use services and facilities on various types of public transportation systems such as buses, passenger trains, and airplanes. This RERC must emphasize the principles of universal design in its product research and development.

(c) *RERC for Prosthetics and Orthotics (Priority 24).* Under this priority, the RERC must increase the understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices.

(d) *RERC for Communication Enhancement (Priority 25).* Under this priority, the RERC must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (i.e., education, employment, recreation, social).

(e) *RERC for Universal Interface and Information Technology Access (Priority 26).* Under this priority, the RERC must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, the community, and the workplace. This RERC must work collaboratively with the RERC on Telecommunication Access, the RERC on Mobile Wireless Technologies, and the NIDRR-funded Information Technology Technical Assistance and Training Center.

(f) *RERC for Wheeled Mobility (Priority 27).* Under this priority, the RERC must research and develop innovative technologies and strategies that will improve the current state of the science, design standards, and usability of wheeled mobility devices and wheelchair seating systems.

Under each priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge base relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, individuals with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

(6) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities

will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these proposed priorities is that the establishment of new DRRPs, new RRTCs, and new RERCs will support the President's NFI and will improve the lives of individuals with disabilities. The new DRRPs, RRTCs, and RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 part 79.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects, 84.133B Rehabilitation Research and Training Centers and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: August 27, 2007.

William W. Knudsen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–17199 Filed 8–30–07; 8:45 am]

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Federal Register

Friday,
August 31, 2007

Part V

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Benefit Restrictions for Underfunded Pension Plans; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113891–07]

RIN 1545–BG72

Benefit Restrictions for Underfunded Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance regarding the use of certain funding balances maintained for defined benefit pension plans and regarding benefit restrictions for certain underfunded defined benefit pension plans. The proposed regulations reflect changes made by the Pension Protection Act of 2006. These regulations affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit pension plans.

DATES: Written or electronic comments and requests for a public hearing must be received by November 29, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–113891–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. to 4 p.m. to CC:PA:LPD:PR (REG–113891–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–113891–07).

FOR FURTHER INFORMATION CONTACT: Lauson C. Green or Linda S.F. Marshall at (202) 622–6090; concerning submissions and requests for a public hearing, contact Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 30, 2007. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.430(f)–1(f) and §§ 1.436–1(f) and 1.436–1(h). This information is required in order for a qualified defined benefit plan's enrolled actuary to provide a timely certification of the plan's AFTAP for each plan year to avoid certain benefit restrictions. In addition, these proposed regulations provide for several written elections to be made by the plan sponsor upon occasion. This information is voluntary to obtain a benefit. The likely respondents are qualified retirement plan sponsors and enrolled actuaries.

Estimated total annual reporting burden: 60,000 hours.

Estimated average annual burden hours per respondent: 0.75 hours.

Estimated number of respondents: 80,000.

Estimated annual frequency of responses: occasional.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 430(f) and 436, as added to the Code by the Pension Protection Act of 2006 (PPA '06), Public Law 109–280, 120 Stat. 780.

Section 412 contains minimum funding rules that generally apply to defined benefit plans.[1] The minimum funding rules that apply specifically to single employer defined benefit plans (including multiple employer plans within the meaning of section 413(c)) are set forth in new section 430.

Section 430 generally provides that the minimum required contribution for a year is the sum of the target normal cost for the year and the shortfall and waiver amortization charges. Under section 430(f)(3), certain funding balances referred to as the prefunding balance and the funding standard carryover balance are permitted to be used to reduce the otherwise applicable minimum required contribution for a plan year in certain situations. Under section 430(f)(7), the funding standard carryover balance is based on the funding standard account credit balance as determined under section 412 for a plan as of the last day of the last plan year beginning in 2007. Under section 430(f)(6), the prefunding balance represents the accumulation of the contributions that an employer makes for a plan year that exceed the minimum required contribution for the year. Thus, an employer that makes additional contributions for a plan year is permitted in certain circumstances to use those excess contributions in order to satisfy the minimum funding requirement in a subsequent plan year.

The treatment of these balances under section 430 reflects congressional concern with the treatment of a funding standard account credit balance under the section 412 rules in effect prior to PPA '06. Accordingly, section 430(f)(3) sets forth new limits on the ability of a

[1] Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code, section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code, and section 206(g) of ERISA sets forth funding-based limitations for defined benefit plans (other than multiemployer plans) that are parallel to those in section 436 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under sections 430(f) and 436 of the Code apply as well for purposes of ERISA sections 303(f) and 206(g), respectively.

poorly funded plan to use the prefunding balance and the funding standard carryover balance for a plan year. In addition, section 430(f)(4) requires that the prefunding balance and the funding standard carryover balance be subtracted from the value of plan assets for certain purposes (including the determination of the plan's funding target attainment percentage (FTAP), as defined under section 430(d)(2)) and section 430(f)(8) requires that the prefunding balance and the funding standard carryover balance be adjusted for actual investment return on the plan assets. In order to give employers the opportunity to minimize the impact of the requirement to subtract the prefunding balance and funding standard carryover balance from the plan assets, section 430(f)(5) permits an employer to elect to reduce the balances.

Section 401(a)(29) requires that a defined benefit plan (other than a multiemployer plan) satisfy the requirements of section 436. Section 436 sets forth a series of limitations on the accrual and payment of benefits under an underfunded plan. Under section 436(g), these limitations (other than the limitations on accelerated benefit payments under section 436(d)) do not apply to a plan for the first 5 plan years of the plan, taking into account any predecessor plan.

Section 436(b) sets forth a limitation on plant shutdown and other unpredictable contingent event benefits in situations where the plan's adjusted funding target attainment percentage (AFTAP) for the plan year is less than 60 percent or would be less than 60 percent taking into account the occurrence of the event. For this purpose, an ''unpredictable contingent event benefit'' means any benefit payable solely by reason of (1) a plant shutdown (or a similar event) or (2) an event other than attainment of age, performance of service, receipt or derivation of compensation, or the occurrence of death or disability. Under section 436(b)(2), the limitation does not apply for a plan year if the plan sponsor makes a specified contribution (in addition to any minimum required contribution). If the AFTAP for a plan year is less than 60 percent, then the specified contribution is equal to the amount of the increase in the plan's funding target for the plan year attributable to the occurrence of the event. If the AFTAP for a plan year is 60 percent or more but would be less than 60 percent taking into account the occurrence of the event, then the specified contribution is the amount sufficient to result in an AFTAP of 60 percent taking into account the occurrence of the event.

Under section 436(c), a plan amendment that has the effect of increasing the liabilities of the plan by reason of any increase in benefits (including changes in vesting) may not take effect if the plan's AFTAP for the plan year is less than 80 percent or would be less than 80 percent taking into account the amendment. Under section 436(c)(2), the limitation does not apply for a plan year if the plan sponsor makes a specified contribution (in addition to any minimum required contribution). If the plan's AFTAP for the plan year is less than 80 percent, then the specified contribution is equal to the amount of the increase in the plan's funding target for the plan year attributable to the amendment. If the plan's AFTAP for the plan year is 80 percent or more but would be less than 80 percent taking into account the amendment, then the specified contribution is the amount sufficient to result in an AFTAP of 80 percent taking into account the amendment. In addition, under section 436(c)(3), the limitation does not apply to an amendment that provides for a benefit increase under a formula not based on compensation, but only if the rate of increase does not exceed the contemporaneous rate of increase in average wages of the participants covered by the amendment.

Under section 436(d), a plan is required to set forth certain limitations on accelerated benefit distributions. If the plan's AFTAP for a plan year is less than 60 percent, the plan must not make any prohibited payments after the valuation date for the plan year. If the plan's AFTAP for a plan year is at least 60 percent but is less than 80 percent, the plan must not pay any prohibited payment to the extent the payment exceeds the lesser of (1) 50 percent of the amount otherwise payable under the plan and (2) the present value of the maximum PBGC guarantee with respect to a participant. In addition, if the plan sponsor is in bankruptcy proceedings, the plan may not pay any prohibited payment unless the plan's enrolled actuary certifies that the AFTAP of the plan is at least 100 percent. However, section 436(d) does not apply to a plan for a plan year if the terms of the plan provide for no benefit accruals with respect to any participant for the period beginning on September 1, 2005, and extending throughout the plan year.

Under section 436(d)(5), a ''prohibited payment'' is (1) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements that are provided under the plan), to a participant or beneficiary, (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (an annuity contract), or (3) any other payment specified by the Secretary by regulations.

Under section 436(e), a plan is required to provide that if the plan's AFTAP is less than 60 percent for a plan year, all future benefit accruals under the plan must cease as of the valuation date for the plan year. Under section 436(e)(2), the limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year, if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year) equal to the amount sufficient to result in an AFTAP of 60 percent.

Section 436(f) sets forth a series of rules under which the limitations of section 436 will not apply to a plan. Under section 436(f)(1), an employer is permitted to provide security to the plan (in the form of a surety bond, cash, or other forms satisfactory to the Treasury Department and the parties involved) that is treated as an asset of the plan for purposes of determining the plan's AFTAP. Under section 436(f)(2), if an employer uses the option in section 436(b)(2), 436(c)(2), or 436(e)(2) to make the specified contribution that would avoid a limitation under section 436, the specified contribution must be an actual contribution and the employer may not use a prefunding balance or funding standard carryover balance in lieu of making the specified contribution. In addition, a contribution to avoid a benefit limitation is disregarded in determining whether the minimum required contribution under section 430 has been made and in determining the plan's prefunding balance.

Section 436(f)(3) describes certain situations in which an employer is deemed to have made the election in section 430(f)(5) to reduce the plan's funding standard carryover balance or prefunding balance. Such an election has the effect of increasing the plan's FTAP (because the result of the election is a higher asset value used to determine the FTAP) and could lead to the plan not being subject to a benefit limitation under section 436. In particular, if the limitation under section 436(d) would otherwise apply to a plan, the plan sponsor is treated as having made an election (a deemed election) to reduce any prefunding balance or funding standard carryover balance by the amount necessary to prevent the benefit limitation from applying. A comparable rule applies to the other benefit limitations under sections 436(b),

436(c), and 436(e), but only in the case of a plan maintained pursuant to a collective bargaining agreement. In either case, this deeming rule applies only if the prefunding balance and funding standard carryover balances are large enough to avoid the application of a section 436 limitation.

Section 436(h) sets forth a series of presumptions that apply during the portion of the plan year that is before the plan's enrolled actuary has certified the plan's AFTAP for the year. Under section 436(h)(1), if a plan was subject to a limitation under section 436(b), 436(c), 436(d), or 436(e) for the plan year preceding the current plan year, the plan's AFTAP for the current year is presumed to be the same as for the preceding year until the plan's enrolled actuary certifies the plan's AFTAP for the current year. Under section 436(h)(3), if any of these limitations did not apply to the plan for the preceding year, but the plan's AFTAP for the preceding year was within 10 percentage points of the limitation's threshold, the plan's AFTAP is presumed to be reduced by 10 percentage points as of the first day of the 4th month of the current plan year, unless the plan's enrolled actuary has certified the plan's AFTAP for the current year by that day (and that day is deemed to be the plan's valuation date for purposes of applying the benefit limitations). If the plan's enrolled actuary has not certified the plan's AFTAP by the first day of the 10th month of the current plan year, section 436(h)(2) provides that the plan's AFTAP is conclusively presumed to be less than 60 percent as of that day (and that day is deemed to be the valuation date for purposes of applying the benefit limitations).

Under section 436(i), unless the plan provides otherwise, if a limitation on prohibited payments or future benefit accruals under section 436(d) or (e) ceases to apply to a plan, all such payments and benefit accruals resume, effective as of the day following the close of the limitation period.

Section 436(j) provides definitions that are used under section 436, including the plan's AFTAP. In general, the plan's AFTAP is based on the plan's FTAP for the plan year. However, the plan's AFTAP is determined by adding the aggregate amount of purchases of annuities for employees other than highly compensated employees (within the meaning of section 414(q)) made by the plan during the two preceding plan years to the numerator and the denominator of the fraction used to determine the FTAP.

In addition, section 436(j)(3) provides a special rule which applies to certain well-funded plans under which the plan's FTAP for purposes of section 436 (and hence the plan's AFTAP) is determined by using the plan's assets without reduction for the prefunding balance and the funding standard carryover balance. Section 436(j)(3)(B) sets forth a transition rule for determining eligibility for this special rule.

Section 436(k) provides that, for plan years that begin in 2008, the determination of the plan's FTAP for the preceding year is to be made pursuant to guidance issued by the Secretary.

Explanation of Provisions

I. Section 430(f)—Effect of Prefunding Balance and Funding Standard Carryover Balance

A. Overview

1. *In general.* The proposed regulations would be the second in a series of proposed regulations under new section 430.[2] These regulations would provide guidance on the application of section 430(f), relating to the establishment and maintenance of a funding standard carryover balance and a prefunding balance for purposes of sections 430 and 436. The Treasury Department and the IRS intend to issue additional proposed regulations relating to other portions of the rules under section 430 later in 2007.

2. *Multiple employer plans.* The proposed regulations under section 430(f) apply to plans subject to section 412 that are maintained by one employer or a controlled group of employers and to multiple employer plans within the meaning of section 413(c). In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules under the proposed regulations would be applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, each employer under such a multiple employer plan may have a separate funding standard carryover balance and a prefunding balance for the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the proposed regulations under section 430(f) would apply as if all participants in the plan were employed by a single employer.

B. Establishment of Prefunding Balance and Funding Standard Carryover Balance

The proposed regulations would provide that an employer is permitted to establish a prefunding balance for a plan that represents the accumulation of contributions made for plan years beginning on or after the effective date of section 430 with respect to the plan (the first effective plan year) that are in excess of the minimum required contributions (determined without regard to the prefunding balance and funding standard carryover balance) for those plan years. Specifically, for the first effective plan year of a plan, the prefunding balance is initialized at zero dollars and an employer is permitted to elect to add some or all of the excess contributions made to a plan for each plan year to the prefunding balance as of the first day of the next plan year. For this purpose, the excess contributions are generally determined as the amount by which the employer contributions to the plan for the plan year exceed the minimum required contribution for the plan year, with appropriate adjustments for interest determined at the effective interest rate under section 430(h)(2)(A). However, the proposed regulations would provide that any contribution that is made to avoid the application of a benefit limitation under section 436 is not taken into account in determining the amount of excess contributions.

The proposed regulations would also provide that the minimum required contribution for purposes of determining the amount of excess contributions for the year is determined without regard to any offset of the minimum required contribution for the year as a result of the use of the prefunding or funding standard carryover balances. Accordingly, an employer would not be permitted to add to the prefunding balance any amount of contributions that are ''excess'' by reason of an offset of the minimum required contribution for the year through the use of the prefunding balance or funding standard carryover balance. This prohibition precludes an employer from avoiding the requirement to adjust the prefunding balance and funding standard carryover balance by the actual rate of return on plan assets in the situation where the plan assets have experienced a loss (or a rate of return that is lower than the effective interest rate that is used for interest adjustments with respect to minimum required contributions for the plan year).

[2] Proposed regulation §§ 1.430(h)(3)–1 and 1.430(h)(3)–2, relating to the mortality tables used to determine liabilities under section 430(h)(3), were issued May 29, 2007 (REG–143601–06, 72 FR 29456).

The proposed regulations would provide that the funding standard carryover balance is initialized as the balance in the funding standard account as of the last day of the last plan year before section 430 applies to a plan (the pre-effective plan year). This is generally the last plan year beginning in 2007, but could be a later year in the case of a plan to which a delayed effective date applies under the rules of sections 104 through 106 of PPA '06.

C. Maintenance of Prefunding Balance and Funding Standard Carryover Balance

The proposed regulations would provide that a plan's prefunding balance and funding standard carryover balance as of the beginning of a plan year are adjusted to reflect the actual rate of return on plan assets for the plan year. This calculation of the actual rate of return on plan assets for the plan year is determined on the basis of fair market value and must take into account the amount and timing of all contributions, distributions, and other plan payments made during the year. The adjustment for investment return is applied to the prefunding balance and funding standard carryover balance after any reductions to those balances as described under the following two headings in this preamble. In addition, the proposed regulations would provide special rules in the case of a plan with a valuation date that is not the first day of the plan year.

D. Use of Prefunding Balance and Funding Standard Carryover Balance To Offset Minimum Funding Requirements for a Year

The proposed regulations would provide that the employer may elect to use some or all of the prefunding balance or funding standard carryover balance to offset the otherwise applicable minimum required contribution for a plan year, provided that the plan met a funding percentage threshold for the preceding plan year. Specifically, an employer is permitted to make such an election only if the plan's prior year funding ratio was at least 80 percent. For this purpose, the plan's prior year funding ratio generally is a fraction (expressed as a percentage), the numerator of which is the value of plan assets on the valuation date for the preceding plan year, reduced by the amount of any prefunding balance (but not the amount of any funding standard carryover balance), and the denominator of which is the funding target of the plan for the preceding plan year (determined without regard to the at-risk rules of section 430(i)(1)).

The proposed regulations would provide a transition rule to determine a plan's prior year funding ratio for the first effective plan year. Under this transition rule, the current liability for the plan for the pre-effective plan year is substituted for the funding target of the plan for that plan year. In addition, the transition rule provides that the value of plan assets is determined under section 412(c)(2) as in effect for that pre-effective plan year, except that the value of plan assets must be limited so that it is not less than 90 percent and not more than 110 percent of the fair market value of plan assets.

The proposed regulations would reflect the rule in section 430(f)(3)(B) that requires the plan sponsor to have reduced the funding standard carryover balance in full (either by using the funding standard carryover balance to offset the minimum required contribution for a year or through a voluntary reduction under section 430(f)(5)) before the prefunding balance is permitted to be used to offset a current year minimum funding requirement.

E. Subtraction From Plan Assets and Employer Election To Reduce Balances

The proposed regulations would reflect the rules under section 430(f)(4) which provide that the prefunding balance and funding standard carryover balance are subtracted from the plan assets for certain purposes. These include the determination of the FTAP, which is also relevant for purposes of applying the benefit limitations of section 436.

In accordance with section 430(f)(4)(A), the proposed regulations would provide that the amount of the prefunding balance is subtracted from the value of plan assets for purposes of determining whether a plan is exempt from the requirement to establish a new shortfall amortization base under section 430(c)(5) only if an election to use the prefunding balance to offset the minimum required contribution is made for the plan year. In addition, pursuant to section 430(f)(4)(B)(ii), the proposed regulations would provide that the prefunding balance and funding standard carryover balance are not subtracted from plan assets for purposes of determining the funding shortfall under section 430(c)(4) to the extent that there is a binding written agreement with the Pension Benefit Guaranty Corporation (PBGC) which provides that all or a portion of those balances cannot be used to offset the minimum required contribution for a plan year. For this purpose, an agreement with the PBGC is taken into account with respect to a plan year only if the agreement was executed prior to the valuation date for the plan year.

In addition, section 436(j) sets forth an exception from the requirement to subtract the plan's prefunding balance and funding standard carryover balance from the value of plan assets in determining a plan's FTAP for purposes of the benefit limitation rules of section 436 provided that the plan's FTAP would meet certain standards if it were calculated without subtracting the balances from plan assets.

Section 430(f)(5) provides that an employer may elect to reduce the amount of the prefunding balance and the funding standard carryover balance. This will have the effect of increasing the plan assets for various purposes. For example, the increase in plan assets will increase the FTAP, which may allow the plan to avoid the application of section 436 limitations. The proposed regulations would reflect the rule in section 430(f)(5)(B) that requires the employer to reduce the funding standard carryover balance in full (either by using the funding standard carryover balance to offset the minimum required contribution for a year or through a voluntary reduction under section 430(f)(5)) before any reduction is permitted for the prefunding balance.

F. Elections Under Section 430(f)

The proposed regulations would provide that an election under section 430(f) is made by the plan sponsor by providing written notification of the election to the plan's enrolled actuary and the plan administrator, must be irrevocable when made, and must satisfy certain timing rules. The written notification must set forth the relevant details of the election, including the specific amounts involved in the election with respect to the prefunding balance and funding standard carryover balance. An election under section 430(f) generally must be made on or before the due date (with extensions) for the filing of the plan's Form 5500 ''Annual Return/Report of Employee Benefit Plan'' for the plan year to which the election relates (or, in the case of a plan not required to file a Form 5500 for the plan year, before the last day of the seventh month after the end of the plan year to which the election relates). For this purpose, an election to add to the prefunding balance relates to the plan year for which excess contributions were made. However, the proposed regulations would require any section 430(f)(5) election to reduce a portion of the prefunding balance or funding standard carryover balance for a plan year to be made by the end of the plan

year to which the election relates. For example, in the case of a calendar year plan required to file Form 5500, an election to add to the prefunding balance as of the first day of the 2010 plan year (in an amount not in excess of the 2009 interest-adjusted excess contributions), must be made no later than the due date for filing the 2009 Form 5500 (with extensions) while an election to reduce the prefunding balance as of the first day of the 2010 plan year must be made by the end of the 2010 plan year. In both cases, the election would be reported on the 2010 Form 5500 (Schedule SB) that would be filed in 2011.

The proposed regulations would provide that, for purposes of elections under section 430(f), any reference in the proposed regulations to the plan sponsor generally means the employer or employers responsible for making contributions to the plan. However, in the case of elections under section 430(f) for multiple employer plans to which section 413(c)(4)(A) does not apply, any reference in the proposed regulations to the plan sponsor means the plan administrator within the meaning of section 414(g).

II. Section 436—Limits on Benefits and Benefit Accruals Under Single Employer Defined Benefit Plans

A. Overview and General Rules

1. *In general.* The proposed regulations would set forth the rules that a defined benefit pension plan that is subject to section 412 and that is not a multiemployer plan must satisfy in order to comply with the requirement in section 401(a)(29) that the plan meet the requirements of section 436. This requirement is a qualification requirement. A plan satisfies the requirements of section 436 only if the plan meets the requirements of these regulations.

2. *New plans.* In accordance with section 436(g), the proposed regulations would provide that the limitations described in sections 436(b), 436(c), and 436(e) do not apply to a plan for the first five plan years of the plan. For purposes of applying this new plan rule, plan years under a plan are aggregated with plan years under a predecessor plan. Thus, the only benefit limitation that could apply under a plan that is not a successor plan during the first five years of its existence is the section 436(d) limitation applicable to accelerated benefit payments (such as single sum distributions).

3. *Multiple employer plans.* The proposed regulations under section 436 apply to plans maintained by one employer (including a controlled group of employers) and to multiple employer plans (within the meaning of section 413(c)). In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules under the proposed regulations would be applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under section 436 could apply differently to employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the proposed regulations under section 436 would apply as if all participants in the plan were employed by a single employer.

4. *Treatment of plan as of close of prohibited or cessation period.* The proposed regulations would provide that, if a limitation on accelerated benefit payments under section 436(d) (such as single sum distributions) applies to a plan as of a section 436 measurement date, but that limit subsequently ceases to apply to the plan as of a later section 436 measurement date, then the limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date. In addition, the proposed regulations would provide that, if a limitation on benefit accruals under section 436(e) applies to a plan, unless the plan provides otherwise, benefit accruals under the plan will resume effective as of the section 436 measurement date as of which benefit accruals are no longer restricted.

With respect to a participant who had an annuity starting date within a period during which the accelerated benefit payment limitation rules of section 436(d) applied to the plan, once the limitation ceases to apply, the participant's benefits will continue to be paid in the form previously elected unless the plan permits the participant to be offered a new election which would modify the prior election. The proposed regulations would permit a plan to provide that the participant will be offered the opportunity to have a new election under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, and that new election will constitute a new annuity starting date for purposes of section 417. Similarly, a plan is permitted to be amended to provide that any benefit accruals that were limited under the rules of section 436(e) will be credited under the plan once the limitation no longer applies, subject to applicable qualification requirements. If a plan provides for the restoration of benefit accruals for the period of the limitation under preexisting plan terms, the plan is treated as having adopted an amendment that has the effect of increasing liabilities under the plan if the period of the limitation exceeded 12 months. Whether a plan is amended or is treated as having been amended as described above, the amendment or pre-existing plan provision is subject to the limitations of section 436(c).[3]

In addition, the proposed regulations would provide that a plan is permitted to be amended to provide that any unpredictable contingent event benefits that were limited under the rules of section 436(b) will be paid or reinstated when the limitation no longer applies, subject to applicable qualification requirements. Any such amendment is subject to the limitations of section 436(c). A plan is not permitted to provide for restoration of any such unpredictable contingent event benefits without an amendment that complies with section 436(c).

5. *Deemed election to reduce prefunding and funding standard carryover balances.* The proposed regulations would provide that, if a limitation on accelerated benefit payments under section 436(d) would otherwise apply to a plan, the plan sponsor is treated as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for the AFTAP to be at or above the applicable threshold (60, 80, or 100 percent, as the case may be) in order for the benefit limitation not to apply to the plan. In such a case, the plan sponsor is treated as having made that election on the section 436 measurement date as of which the benefit limitation would otherwise apply. This deemed election applies if the plan provides for accelerated distributions that would be limited in a plan year, regardless of whether a plan participant is eligible or elects to receive such a distribution during the plan year (but does not apply if the plan does not provide for any accelerated distributions that are subject to the benefit limitation). However, the deemed reduction applies with respect to this limitation only if the prefunding and funding standard carryover balances to be reduced are large enough

[3] The PBGC has informed the IRS and the Treasury Department that it expects similarly to treat such an automatic restoration of missed benefit accruals as a plan amendment.

to avoid the application of the limitation. Thus, no reduction of prefunding and funding standard carryover balances is required if the limitation would still apply for a year even if those balances were reduced to zero.

In addition, the proposed regulations would provide that, in the case of a plan maintained pursuant to one or more collective bargaining agreements between an employee representative and one or more employers in which a benefit limitation under section 436(b), 436(c), or 436(e) would otherwise apply to the plan, the employer is treated for purposes of section 436 as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for the AFTAP to be at or above the applicable threshold for the benefit limitation not to apply to the plan, taking into account the unpredictable contingent event benefits or plan amendment, as applicable. The proposed regulations would provide that, in the case of a plan with respect to which collective bargaining agreements apply to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of this provision if at least 25 percent of the participants in the plan are members of the collective bargaining units for whom the benefit levels under the plan are specified under the collective bargaining agreements. As in the case of the deemed reduction in funding balances for the accelerated benefit distributions under section 436(d), the deemed reduction applies only if the prefunding and funding standard carryover balances to be reduced are large enough to avoid the application of the limitation under section 436(b), 436(c), or 436(e), as applicable.

If the mandatory reduction of funding balances applies to a plan, the employer is treated as having made that election on the date as of which the applicable benefit restriction would otherwise apply. In addition, the proposed regulations would provide that, if a plan (whether or not collectively bargained) is presumed to have an AFTAP of less than 60 percent under the section 436(h) presumption rules, then the plan is treated as if the plan's funding standard carryover balance and prefunding balance are insufficient to increase the plan's AFTAP to the threshold percentage.

6. *Section 436 measurement date.* The ''section 436 measurement date'' is a defined term under the proposed regulations that is used to describe the date that stops or starts the application of the limitations of sections 436(d) and 436(e) and is also used for calculations with respect to applying the limitations of sections 436(b) and 436(c). The regulations would provide that the date of the enrolled actuary's certification of the AFTAP for the plan year is a section 436 measurement date if it occurs within the first nine months of the plan year. If the date of an enrolled actuary's certification of the AFTAP is between the first day of the 10th month of a plan year and the last day of that plan year, that date is not a section 436 measurement date for purposes of the limitations of section 436(d) or 436(e) because, in that case, the plan's AFTAP is presumed to be under 60 percent (however, receipt of the enrolled actuary's certification during that period impacts the plan's presumed ''carryover'' AFTAP for the following year). The proposed regulations would provide that a section 436 measurement date occurs where there is a change in the plan's AFTAP under the presumption rules of section 436(h). In addition, the proposed regulations would provide a series of rules in cases where the enrolled actuary's certification of the AFTAP for a plan year is made after the end of the plan year, as described below under the heading ''Presumed underfunding for purposes of benefit limitations.''

B. Limitation on Plant Shutdown and Other Unpredictable Contingent Event Benefits

In accordance with section 436(b), the proposed regulations would provide that a plan that provides for any unpredictable contingent event benefit [4] must provide that the benefit will not be paid to a plan participant during a plan year if the AFTAP for the plan year is less than 60 percent (or is 60 percent or more but would be less than 60 percent if the benefits attributable to the unpredictable contingent event were taken into account in determining the AFTAP). However, this prohibition on payment of unpredictable contingent event benefits no longer applies for a plan year, effective as of the first day of the plan year, if the employer makes the contribution specified in section 436(b)(2), as described in paragraph F in this preamble.

For this purpose, the proposed regulations would provide that an ''unpredictable contingent event benefit'' means any benefit or increase in benefits to the extent the benefit or increase would not be payable but for the occurrence of an unpredictable contingent event, and an ''unpredictable contingent event'' means a plant shutdown (whether full or partial) or similar event, or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability. Thus, for example, if a plan provides for an unreduced early retirement benefit upon the occurrence of an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, then that unreduced early retirement benefit is an unpredictable contingent event benefit to the extent of any portion of the benefit that would not be payable but for the occurrence of the event, even if the remainder of the benefit is payable without regard to the occurrence of the event. Similarly, an unpredictable contingent event benefit under the proposed regulations includes a benefit payable upon the presence of circumstances specified in the plan (other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability), so that a plan that provides those benefits upon a participant's severance from employment in those circumstances, but not upon a severance from employment that does not involve those circumstances, is providing an unpredictable contingent event benefit.

Unpredictable contingent event benefits attributable to a plant shutdown or other unpredictable contingent event that occurred within a period during which no limitation under section 436(b) applied to the plan are not affected by the limitation as it applies in a subsequent period. For example, if a plant shutdown occurs in 2010 and a plan's funded status is such that its shutdown benefits are not subject to the limitation for that plan year, benefits paid pursuant to that shutdown are permitted to be paid in a later plan year even if the plan's AFTAP for the subsequent year is less than 60 percent. Conversely, if a plant shutdown occurs in 2010 and a plan's funded status is such that its shutdown benefits are subject to the limitation under section 436(b) for that plan year and cannot be paid, those shutdown benefits related to the 2010 plant shutdown are not permitted to be paid in a later year even if the plan's AFTAP for the later year is at or above the 60 percent threshold for the section 436(b) limitation (subject to

[4] See also Notice 2007–14, IRB 501, (see § 601.601(d)(2) of this chapter) requesting comments on the types of benefits that are permitted to be provided in a qualified defined benefit plan, including benefits payable in the event of a plant shutdown or similar event.

the rules permitting plan amendments to reinstate previously restricted benefits, including unpredictable contingent event benefits, as described in paragraph II.A.4 of this preamble).

C. Limitations on Plan Amendments Increasing Liability for Benefits

In accordance with section 436(c), the proposed regulations would provide that a plan satisfies the limitation on plan amendments increasing liability for benefits only if the plan provides that no amendment to the plan that has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable is permitted to take effect if the AFTAP for the plan year is less than 80 percent (or is 80 percent or more but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the AFTAP). However, this prohibition on plan amendments no longer applies for a plan year if the employer makes the contribution specified in section 436(c)(2), as described in paragraph F of this preamble.

In accordance with section 436(c)(3), the limitation on amendments increasing liabilities does not apply to any amendment that provides for an increase in benefits under a formula that is not based on a participant's compensation, but only if the rate of increase in benefits does not exceed the contemporaneous rate of increase in average wages of participants covered by the amendment. The proposed regulations would provide that the determination of the rate of increase in average wages is made by taking into consideration the net increase in average wages during the period beginning with the effective date of the most recent benefit increase applicable to all of those participants who are covered by the current amendment and ending on the effective date of the current amendment. If the participants covered by an amendment include both currently employed participants and terminated participants (who will have no increase or decrease in wages for this purpose after severance from employment), all covered participants must be included in determining the increase in average wages of the participants covered by the amendment. Alternatively, the employer could adopt two amendments—one that increases benefits for currently employed participants and another one that increases benefits for the terminated participants. In that case, this exception from application of the section 436(c) limitation generally would apply to the amendment that increases benefits for currently employed participants (based solely on the wages of those current employees), but the amendment that applies only to terminated participants (who received no increase in wages from the employer during the period over which the increase in average wages is determined) would not be eligible for the exception.

In addition, the proposed regulations would provide that, to the extent that any amendment results in (or is made pursuant to) a mandatory increase in the vesting of benefits under the Code or ERISA (such as vesting rate increases pursuant to statute and plan termination amendments under section 411(d)(3)), that amendment does not constitute an amendment that changes the rate at which benefits become nonforfeitable for purposes of section 436(c).

D. Limitations on Accelerated Benefit Distributions

1. *Funding percentage less than 60 percent.* In accordance with section 436(d)(1), under the proposed regulations, a plan must provide that, if the plan's AFTAP for a plan year is less than 60 percent, the plan will not pay any prohibited payment with an annuity starting date that is on or after the applicable section 436 measurement date. However, if a participant requests such a prohibited distribution, the plan must permit the participant to elect another form of benefit available under the plan or to defer payment to a later date to the extent permitted under applicable qualification requirements. Similar rules apply in any case in which a beneficiary is entitled to a prohibited payment (for example, where a qualified pre-retirement survivor annuity is offered in an alternative single sum payment).

2. *Bankruptcy.* In accordance with section 436(d)(2), under the proposed regulations, a plan must provide that the plan will not pay any prohibited payment with an annuity starting date that is during any period during a plan year in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, until the date on which the enrolled actuary of the plan certifies that the plan's AFTAP is not less than 100 percent.

3. *Limited payment if percentage at least 60 percent but less than 80 percent.* In accordance with section 436(d)(3), under the proposed regulations, a plan must provide that, in any case in which the plan's AFTAP for a plan year is 60 percent or more but is less than 80 percent, a participant is permitted to elect a prohibited payment only if the present value of the portion of the payment that is greater than the amount of the monthly straight life annuity under the plan (and any social security supplement, if applicable) does not exceed 50 percent of the present value of the participant's benefits (or if less, 100 percent of the present value of the maximum guarantee with respect to the participant under section 4022 of ERISA). For this purpose, present value is determined using the rules of section 417(e) except that, if the plan provides a single sum distribution that is larger than the present value of the benefit determined using the rules of section 417(e), then that larger benefit is substituted for the present value of the participant's benefits before applying the 50 percent factor. Similar rules apply in any case in which a beneficiary is entitled to a prohibited payment.

If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the annuity starting date because it is a prohibited payment that cannot be paid under the preceding paragraph, then the plan must provide a participant who elects such an optional form with the option either to defer payment to a later date (to the extent permitted under applicable qualification requirements) or to bifurcate the benefit into unrestricted and restricted portions. If the participant elects to bifurcate the benefit, the plan must permit the participant to elect, with respect to the unrestricted portion, any optional form of benefit otherwise available under the plan with respect to the participant's entire benefit (whether or not the optional form of benefit with respect to the unrestricted portion is a prohibited payment). The unrestricted portion of the benefit is the lesser of (i) 50 percent of the benefit and (ii) the benefit that has a present value that does not exceed 100 percent of the present value of the maximum PBGC guarantee with respect to the participant under section 4022 of ERISA. If the participant elects payment of the unrestricted portion of the benefit in the form of a prohibited payment, then the plan must permit the participant to elect payment of the restricted portion in any optional form of benefit under the plan that would have been permitted with respect to the participant's entire benefit other than a prohibited payment. A plan is also permitted (but not required) to offer optional forms of benefit that are solely available during the period section 436(d)(3) applies to the plan, such as an optional form of benefit that provides

for the current payment of the unrestricted portion of the benefit, with a delayed commencement for the restricted portion of the benefit, subject to other applicable qualification requirements.

A participant who receives a prohibited payment (or a series of prohibited payments under a single optional form of benefit) under the rule permitting certain prohibited payments cannot receive any additional payment that would be a prohibited payment until there is a plan year for which none of the limitations on accelerated distributions under section 436(d) apply. Benefits provided to a participant and any beneficiary are aggregated for purposes of determining the limited distribution under section 436(d)(3). The proposed regulations would also reflect the rules of section 436(d)(3)(B)(ii), which describes how this limited distribution is allocated among the beneficiaries of a participant.

4. *Exception for certain frozen plans.* In accordance with section 436(d)(4), the limitations under section 436(d) will not apply to a plan for any plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, provided for no benefit accruals with respect to any participants. However, if such a plan provides for any benefit accruals during a plan year, this exception will cease to apply for the plan as of the date those accruals start.

5. *Prohibited payment.* In accordance with section 436(d)(5), the proposed regulations would provide that the term ''prohibited payment'' means:

(i) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period that a limitation on accelerated benefit payments is in effect;

(ii) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(iii) Any other payment that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

In addition, for purposes of applying the limitations on accelerated benefit payments under the requirements of section 436(d), the term *annuity starting date* means, as applicable—

(a) The first day of the first period for which an amount is payable as an annuity as described in section 417(f)(2)(A)(i);

(b) In the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred (including the participant's election, the participant's severance from employment if the participant is below normal retirement age, and, if applicable, the participant's survival to the date as of which payment is made) which entitle the participant to such benefit as described in section 417(f)(2)(A)(ii);

(c) In the case of an amount payable on a retroactive annuity starting date, the benefit commencement date; and

(d) The date of any payment for the purchase of an irrevocable commitment from an insurer to pay benefits under plan.

E. Limitation on Benefit Accruals

In accordance with section 436(e), under the proposed regulations, a plan must provide that, in any case in which the plan's AFTAP for a plan year is less than 60 percent, benefit accruals under the plan will cease as of the applicable section 436 measurement date. If a plan must cease benefit accruals under this limitation, then the plan is also not permitted to be amended in a manner that would increase the liabilities of the plan by reason of an increase in benefits or establishment of new benefits. This rule applies regardless of whether an amendment would otherwise be permissible under section 436(c)(3) (involving certain amendments to increase benefits under a formula not based on a participant's compensation). This prohibition on additional benefit accruals will no longer apply for a plan year if the plan sponsor makes the contribution specified in section 436(e)(2), as described in paragraph F of this preamble.

F. Rules Relating to Contributions Required To Avoid Benefit Limitations

The proposed regulations provide rules regarding contributions by the plan sponsor to avoid benefit limitations under section 436. An employer sponsoring a plan that would otherwise be subject to the limitations of section 436 can avoid the application of those limits through one of four different techniques: 1) reducing the funding standard carryover balance and prefunding balance; 2) making additional contributions for a prior plan year that are not added to the prefunding balance; 3) making the specific contributions described in sections 436(b)(2), 436(c)(2), and 436(e)(2); and 4) providing security, as described in section 436(f)(1).

As noted in this preamble, under the first of the techniques, if a plan sponsor elects to reduce the plan's funding standard carryover balance or the prefunding balance, this will have the effect of increasing the plan assets that are taken into account in determining the plan's FTAP and AFTAP and, thereby, will raise the AFTAP to a level so that the benefit limitations may no longer apply to the plan. Alternatively, if the deadline for making prior year contributions has not passed, the plan sponsor could utilize the second technique—making additional contributions for the prior plan year. If these additional contributions are not added to the prefunding balance, then the additional contributions will also have the effect of increasing the plan's FTAP and AFTAP.

The third and fourth techniques for avoiding the application of the benefit limitations of section 436 are described in § 1.436–1(f) of the proposed regulations. Under the third technique, the plan sponsor makes additional contributions that are specifically designated at the time the contribution is used to avoid the application of a limitation under section 436(b), 436(c), or 436(e). The proposed regulations would provide for this designation to be provided to the plan's enrolled actuary and plan administrator in writing. Furthermore, the designation must be irrevocable, except as described below. If the contributions are made on a date other than the valuation date for the plan year, the contributions must be adjusted for interest (using the plan's effective interest rate, except as provided in the proposed regulations). These contributions are separate from any minimum required contributions required by section 430, and no prefunding balance or funding standard carryover balance under section 430(f) may be used as a contribution to avoid a section 436 benefit limitation. A plan sponsor that makes such a current year contribution will nonetheless fail to satisfy the minimum funding requirements if it does not make the minimum required contribution under section 430 for the year. In addition, as noted above, these contributions are not taken into account in determining whether a plan sponsor is making excess contributions for purposes of adding to the plan's prefunding balance.

The fourth technique for a plan sponsor to avoid the application of the benefit limitations of section 436 is for the plan sponsor to provide security. In such a case, the AFTAP for the plan year is determined by treating as an asset of the plan any security provided by a plan sponsor by the valuation date

for the plan year in a form meeting certain specified requirements. However, this security is not taken into account for any other purpose, including section 430. The only security permitted to be provided by a plan sponsor for this purpose is (i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA, or (ii) cash or United States obligations that mature in three years or less that are held in escrow by a bank or insurance company. The regulations would reflect sections 436(f)(1)(C) and (D) in specifying when the security is to be contributed to the plan and when it may be released. If the security is turned over to the plan, then that amount is treated as an employer contribution when it is turned over to the plan. The proposed regulations would provide that any such security turned over to the plan pursuant to the enforcement mechanism cannot be treated as a contribution to avoid or terminate the application of a section 436 benefit limitation under section 436(b)(2), 436(c)(2), or 436(e)(2).

G. Presumed Underfunding for Purposes of Benefit Limitations

The proposed regulations reflect the rules of section 436(h), which sets forth a series of presumptions that are used to apply the section 436 benefit limitations in situations where the plan's enrolled actuary has not yet issued a certification of the plan's AFTAP for the plan year. In addition, the proposed regulations also set forth rules for the application of the limitations prior to and during the period those presumptions apply to a plan, and describe the interaction of those presumptions with plan operations after the plan's enrolled actuary has issued a certification of the plan's AFTAP for the plan year. These rules are designed to encourage plans to obtain certifications in a timely manner, with a particular emphasis with respect to plans that have a greater likelihood of having a new section 436 benefit limitation apply because they had an AFTAP for the prior plan year that was near a threshold for a benefit limitation to apply.

The proposed regulations would provide that, in any case in which a plan was subject to a benefit limitation on the last day of the prior plan year, the first day of the plan year is a section 436 measurement date and the AFTAP of the plan for the current plan year is presumed to be equal to the preceding year's certified AFTAP until the plan's enrolled actuary certifies the AFTAP of the plan for the current plan year. Because no plan could be subject to a benefit limitation for a plan year that precedes the plan year that begins in 2008, the section 436(h)(1) presumption generally will not apply to any plan before the first plan year beginning in 2009.

In accordance with section 436(h)(3), the proposed regulations would provide that, if the enrolled actuary of the plan has not certified the AFTAP of the plan for the current plan year by the first day of the 4th month of the plan year and the AFTAP for the preceding year was certified to be at least 60 percent but less than 70 percent or at least 80 percent but less than 90 percent, then the first day of the 4th month of the current plan year is a section 436 measurement date, and the AFTAP of the plan is presumed to be equal to 10 percentage points less than the AFTAP of the plan for the preceding plan year. This presumption will apply until the earlier of the date the enrolled actuary certifies the AFTAP for the plan year or the first day of the 10th month of the plan year.

In accordance with section 436(h)(2), the proposed regulations would provide that, in any case in which no certification of the specific AFTAP for the current plan year is made before the first day of the 10th month of such year, that date is a section 436 measurement date and, as of that date, the plan's AFTAP is conclusively presumed to be less than 60 percent. In such a case, the presumed AFTAP of under 60 percent for the current plan year will continue to apply under the rules of section 436(h)(1) for the next plan year, until such time as the enrolled actuary certifies the AFTAP for either the current plan year or the next plan year.

The proposed regulations would provide rules that apply the section 436(h) presumptions for the plan year in cases in which the enrolled actuary's certification for the prior plan year is made on or after the first day of the 10th month of that prior plan year. If the date of the enrolled actuary's certification of the specific AFTAP for a plan year occurs on or after the date the conclusive presumption applies but on or before the last day of the plan year, the proposed regulations would provide that the certified percentage is disregarded for that plan year but is used for purposes of the presumption rule of section 436(h)(1) starting with the beginning of the following plan year (rather than continuing to apply the less-than-60 percent presumption that applied before the first day of that following plan year). If the date of the enrolled actuary's certification of the specific AFTAP for a plan year occurs after the end of the plan year but prior to the first day of the 4th month in the following plan year, the proposed regulations would provide that the certification date is treated as a section 436 measurement date for that following plan year and that, starting on that date, the plan's AFTAP is presumed to be the certified AFTAP for the prior year (rather than continuing to apply the less-than-60 percent presumption that applied before the certification). If the date of the enrolled actuary's certification of the specific AFTAP for a plan year occurs after the first day of the 4th month in the following plan year but before the first day of the 10th month, the proposed regulations would provide that the certification date also is a section 436 measurement date for that following plan year, and the plan's AFTAP for that following year beginning on that date is presumed to be the certified AFTAP for the prior year (rather than continuing to apply the less-than-60 percent presumption that applied before the certification). However, in such a case, if a 10 percentage point reduction in the AFTAP would have applied on the first day of the 4th month of that following plan year if the AFTAP for the prior plan year had been certified before that day, then the same 10 percentage point reduction applies on the date of the certification. These presumption rules based on the prior year AFTAP do not apply once a certification of the following year's AFTAP is issued by the plan's enrolled actuary.

The enrolled actuary's certification of the AFTAP for a plan year must be made in writing, must be provided to the plan administrator, and must certify the plan's AFTAP for the plan year. As an alternative to certifying a specific number for the plan's AFTAP, the regulations would provide that the enrolled actuary is permitted to certify during the first nine months of a plan year that the plan's AFTAP for that year is within a percentage ''range'' that is either (i) 60 percent or higher, but less than 80 percent, (ii) 80 percent or higher, or (iii) 100 percent or higher. The proposed regulations would provide that such a ''range'' certification ends the application of the presumptions provided that the enrolled actuary follows up with a certification of the specific AFTAP before the first day of the 10th month of that year and that the certified specific AFTAP is within the range of the earlier certification.

If this ''range'' certification alternative is followed, the plan is treated as having a certified AFTAP at the smallest value within the applicable range. Thus, for example, if the enrolled actuary certified that the AFTAP was more than

60 percent but less than 80 percent, then the plan is treated as having an AFTAP of 60 percent for purposes of applying the limitations of section 436(b) until the earlier of the date of the specific AFTAP certification or the first day of the 10th month of the plan year. In such a case, if the plan has an unpredictable contingent event or a plan amendment that increases liability for benefits, unpredictable contingent event benefits cannot be paid and the plan amendment cannot take effect unless the plan sponsor makes a contribution described in section 436(b)(2) or 436(c)(2), as applicable. If the plan sponsor makes a contribution under section 436(b)(2) or section 436(c)(2), the proposed regulations would provide that the contribution is recharacterized as a regular employer contribution that is taken into account under section 430 for the current plan year to the extent it is determined that the contribution was not needed to avoid the application of the benefit limit, based on the subsequent calculation of the specific AFTAP.

The proposed regulations would specify that the enrolled actuary is generally not permitted to certify the AFTAP based on a value of assets that includes contributions receivable for the prior year that have not actually been made as of the date of the certification. However, this rule would not apply to certifications that are made for plan years beginning before January 1, 2009. Thus, for a certification with respect to 2008, the enrolled actuary is permitted to take in account contributions for 2007 that are reasonably expected but have not yet been made by the plan sponsor at the time of the certification. However, if the plan sponsor does not make those contributions, the enrolled actuary's certification will be incorrect, which will result in a failure to satisfy section 401(a)(29) and section 436 if the difference constitutes a material change.

If the enrolled actuary for the plan provides a certification of the AFTAP for the plan year (including a range certification) and that certified percentage is superseded by a subsequent determination of the AFTAP for that plan year, that later percentage must be applied and a determination must be made whether the change in the applicable percentage is a material change or an immaterial change. For this purpose, the proposed regulations would specify that there is a material change if plan operations with respect to benefits that are addressed by section 436, taking into account any actual contributions and elections under section 430(f) made by the plan sponsor based on the prior certified percentage, would have been different based on the subsequent determination of the plan's AFTAP for the plan year. Thus, for example, if after the actuary certifies the plan's AFTAP for a plan year, the plan sponsor elects to add excess contributions for the prior plan year to the plan's prefunding balance, this would have the effect of reducing the plan's AFTAP, and such a change could be a material change.

The proposed regulations would specify that an immaterial change is a change in an AFTAP that is not a material change. In addition, the proposed regulations would provide that if the difference between the AFTAP for a plan year and the later revised determination of that percentage is the result of additional contributions for the preceding year that are made by the plan sponsor after the date of the enrolled actuary's certification or results from the plan sponsor's election to reduce the prefunding or funding standard carryover balance after the date of the certification, such change is always treated as an immaterial change (regardless of whether it would otherwise affect the application of the section 436 benefit limitations).

In the case of a material change where the plan was operated in accordance with the prior certification of the AFTAP for the plan year, the plan will not have satisfied the requirements of section 401(a)(29) and section 436. In the case of a material change where the plan was operated in accordance with the subsequent certification of the AFTAP during the period of time the prior certification applied, then the plan will not have been operated in accordance with its terms. In addition, in the case of a material change, the rules requiring application of a presumed AFTAP under section 436(h) continue to apply from and after the date of the prior certification until the date of the subsequent certification. In the case of an immaterial change, the revised percentage applies prospectively but it does not change the inapplicability of the presumptions under section 436(h) for the plan year prior to the date of the subsequent certification.

H. Coordination Between Presumptions and Determination of AFTAP

1. *Periods during which a presumption applies to the plan.* A plan must provide that, for any period during which a presumption under section 436(h) applies to the plan, the limitations applicable under sections 436(b), 436(c), 436(d), and 436(e) apply to the plan as if the actual AFTAP for the year were the presumed AFTAP. During that period, the rules relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance must be applied based on the presumed percentage with respect to the applicable limitations. Thus, a plan's prefunding balance and funding standard carryover balance must be reduced if the reduction would be sufficient to avoid the applicable limitation. The proposed regulations provide rules for determining the amount of the reduction in balances.

If the presumed AFTAP for the plan year changes during the year because of application of the presumption in section 436(h)(3), the rules regarding the deemed election to reduce funding balances must be reapplied based on the new presumed AFTAP. This reapplication of the deemed election may require an additional reduction in funding balances if the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of the limitation under section 436(d) or 436(e) is greater than the amount that was initially reduced.

2. *Periods prior to certification where no presumption applies.* If no presumptions under section 436(h) apply to a plan for a period and the plan's enrolled actuary has not yet issued the certification of the plan's AFTAP for the plan year, the plan is not permitted to limit the payment of unpredictable contingent event benefits or the accrual of benefits based on an expectation that the limitations under section 436(d) or 436(e) will apply to the plan once the enrolled actuary's certification of the AFTAP is issued. In addition, the proposed regulations would provide that, if no presumptions under section 436(h) apply to a plan during a period and the plan's enrolled actuary has not yet issued a certification of the plan's AFTAP for the plan year, the limitations under sections 436(b) and 436(c) that apply to unpredictable contingent event benefits and certain plan amendments, respectively, during that period must be applied following the special rules described below in paragraph H.3. of this preamble. Thus, if after application of those rules the plan would be treated as having an AFTAP below the applicable threshold under section 436(b) or 436(c), the limitation will apply unless the plan sponsor makes a contribution to avoid application of the applicable benefit limitations described in section 436(b)(2) or 436(c)(2). In such case, following the certification of the AFTAP for the current plan year by the plan's enrolled actuary, the proposed regulations would provide that those

contributions are recharacterized as employer contributions under section 430 for the current plan year to the extent they exceed the amount necessary to avoid application of the applicable limitation under section 436(b) or 436(c) based on the certified percentage.

3. *Periods prior to certification—special rules for unpredictable contingent event benefits and plan amendments that increase liability.* The proposed regulations would provide that, during the pre-certification period, the rules relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance must be applied based on the plan's presumed AFTAP. The proposed regulations would provide rules for determining the amount of the reduction in those balances that would apply in such a situation and provide that, in making such determination, the presumed adjusted funding target is increased to take into account the benefits attributable to the unpredictable contingent event or the plan amendment described in section 436(b) and 436(c), respectively. For this purpose, if no presumption applies under the rules of section 436(h) (for example, because the plan's actual AFTAP for the prior year was certified to be at least 80 percent), then that prior year's actual AFTAP is substituted for the presumed AFTAP for the plan year in determining the presumed adjusted funding target. In the case of a plan that is not a collectively bargained plan with a funding standard account carryover balance or a prefunding balance, the deemed election rules do not apply for purposes of sections 436(b) and 436(c), and the plan sponsor is permitted (but not required) to reduce those balances in order to increase the adjusted plan assets that are compared to the presumed AFTAP.

If, after application of such funding balance reductions and the other calculations set forth in the proposed regulations, the plan's AFTAP (taking into account the additional benefits) is less than the applicable threshold under section 436(b) or 436(c), as applicable, then the plan is not permitted to provide any benefits attributable to the unpredictable contingent event or plan amendment unless the plan sponsor makes a contribution that would allow payment of unpredictable contingent event benefits or would permit a plan amendment increasing benefit liabilities to go into effect under the rules of section 436(b)(2) or 436(c)(2).

If, after application of such funding balance reductions, the plan's AFTAP (taking into account the additional benefits) is greater than or equal to the applicable threshold under section 436(b) or 436(c), as applicable, then the plan is not permitted to limit the payment of unpredictable contingent event benefits under section 436(b) or to restrict a plan amendment increasing liability for benefits from taking effect under section 436(c) based on an expectation that those limitations will apply to the plan once the enrolled actuary's certification is issued.

4. *Limitations based on AFTAP.* The proposed regulations would provide that, on and after the date the enrolled actuary for the plan issues a certification of the AFTAP for the current plan year, the plan must apply that certified percentage (however, if the certification is issued on or after the first day of the 10th month of the current plan year but before the first day of the following plan year, the certified percentage applies under the presumption rules beginning on the first day of that following plan year). For example, the plan sponsor must apply the certified AFTAP for a plan year to an unpredictable contingent event that occurs or a plan amendment that is effective on or after the date of the enrolled actuary's certification during the plan year. Thus, the plan administrator must determine if the AFTAP is at or above the applicable threshold, taking into account the increase in the funding target that would be attributable to the unpredictable contingent event or plan amendment if the unpredictable contingent event benefits or the increase in liability attributable to the plan amendment were taken into account.

After the AFTAP for a plan year is certified by the plan's enrolled actuary, with respect to the application of limitations under sections 436(d) and 436(e) (accelerated benefit payments and benefit accruals, respectively) for the plan year, the deemed election to reduce funding balances must be reapplied based on the actual funding target for the year (provided the certification is issued by the first day of the 10th month). This reapplication of the deemed election may require an additional reduction in funding balances if the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of those limitations is greater than the amount of a prior reduction for the plan year. The proposed regulations would also reflect section 436(d)(2), which provides that no prohibited payments under section 436(d)(5) are permitted to be paid by a plan during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or any similar Federal or State law, if the plan's enrolled actuary has not yet certified the plan's AFTAP for the plan year to be at least 100 percent. Thus, the presumptions do not apply for purposes of section 436(d)(2).

The proposed regulations would provide that the enrolled actuary's certification of the AFTAP does not affect the application of the limitation under section 436(d) for participants with annuity starting dates before the certification. Similarly, the enrolled actuary's certification for the plan year does not affect the application of the limitation under section 436(e) of this section prior to the date of that certification.

With respect to the impact of the enrolled actuary's certification of the AFTAP for a plan year on periods prior to the certification, the proposed regulations would provide that the certification does not affect the application of limitations under sections 436(b) and 436(c) for periods prior to the date the certification is issued, regardless of the extent to which the certified percentage varies from the presumed percentage. Notwithstanding the foregoing, in the case of a plan that, for a plan year, did not provide benefits attributable to an unpredictable contingent event or plan amendment based on the preceding year's certified AFTAP (and where sufficient contributions under section 436(b)(2) or 436(c)(2) were not made), the plan must provide any benefits that were not so provided if those benefits would be permitted under the rules of section 436 based on the certified AFTAP, taking into account the increase in the funding target that would be attributable to the unpredictable contingent event benefits or increase in liability due to the plan amendment.

A special rule applies if a plan is providing benefits with respect to one or more unpredictable contingent events occurring within the plan year or amendments taking effect within the plan year. In such a case, the restrictions on unpredictable contingent event benefits and plan amendments are applied with respect to a subsequent unpredictable contingent event or amendment by treating the increase in the funding target attributable to the subsequent event or amendment as if it included the increases in the funding target attributable to all such earlier events or amendments.

I. Determination of Funding Target Attainment Percentage

For purposes of section 436, the *funding target* means the funding target

under section 430(d) or section 430(i), as applicable to the plan for a plan year.

For purposes of section 436, the *funding target attainment percentage* (FTAP) for any plan year is the fraction (expressed as a percentage), the numerator of which is the value of net plan assets, and the denominator of which is the plan's funding target (determined without regard to the at-risk rules under section 430(i) even in the case of a plan that is in at-risk status). For this purpose, pursuant to section 430(f)(4), the value of net plan assets for the plan year is generally determined by subtracting the plan's funding standard carryover balance and prefunding balance (if any) for the plan year from the value of plan assets.

The *adjusted funding target attainment percentage* (AFTAP) for any plan year is the fraction (expressed as a percentage), the numerator of which is the adjusted plan assets and the denominator of which is the adjusted funding target. The adjusted plan assets equals the net plan assets, increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years. The proposed regulations would provide that the adjusted funding target equals the funding target for the plan year (determined without regard to the at-risk rules under section 430(i)), increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

If the FTAP for a plan year, determined without regard to the section 430(f)(4) subtraction of the funding standard carryover balance and the prefunding balance from the value of plan assets, would be 100 percent or more, then, for purposes of section 436 (but not section 430(d)), the value of net plan assets used in the determination of the FTAP and the AFTAP is determined without regard to any subtraction of funding balances under section 430(f)(4). The proposed regulations would reflect the transition rule of section 436(j)(3)(B) under which a plan is permitted to phase up to 100 percent for purposes of the preceding sentence.

The proposed regulations would also provide that, in the case of the first plan year beginning in 2008, the FTAP for the preceding plan year is determined as a fraction (expressed as a percentage), the numerator of which is the value of net plan assets, and the denominator of which is the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the last plan year that begins before 2008 (the 2007 plan year). For this purpose, the value of plan assets is determined under section 412(c)(2) as in effect for the 2007 plan year, except that the value of plan assets prior to subtraction of the plan's funding standard account credit balance described below can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year. If a plan has a funding standard account credit balance as of the valuation date for the 2007 plan year, that balance must be subtracted from the asset value described above as of that date unless the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under section 412(l)(7) on the valuation date for the 2007 plan year.

In the case of the first plan year beginning in 2008, for purposes of determining the AFTAP for the 2007 plan year, the proposed regulations provide that the adjusted funding target is equal to the current liability determined pursuant to section 412(l)(7) on the valuation date for the 2007 plan year, increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years. In any case in which the plan's enrolled actuary has not issued a certification of the AFTAP of the plan for the 2007 plan year using this rule, the AFTAP of the plan for the first plan year beginning in 2008 is presumed to be less than 60 percent until the AFTAP of the plan for the 2007 plan year has been certified or the AFTAP of the plan for the first plan year beginning in 2008 has been certified. This rule applies for purposes of sections 436(b) and 436(c) at the beginning of the first plan year beginning in 2008 and applies for purposes of sections 436(d) and 436(e) as of the first day of the 4th month of the first plan year beginning in 2008. The special rules permitting range certifications for plan years beginning after 2007 do not apply to the 2007 plan year.

However, if the employer makes an election to reduce some or all of the funding standard carryover balance as of the first day of the first plan year beginning in 2008 in accordance with proposed § 1.430(f)–1(e), then the present value (determined as of the valuation date for the prior year using the valuation interest rate for that prior year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the value of net plan assets. Thus, an employer's election to reduce the funding standard carryover balance in 2008 will have the effect of reducing the amount that must be subtracted from the assets in determining the 2007 AFTAP for purposes of applying the presumptions under section 436(h)(3) as of the first day of the 4th month of the plan year beginning in 2008.

Proposed Legislation

As of the date of issuance of these proposed regulations, bills have been introduced in the House of Representatives and the Senate that would exclude mandatory cash-out distributions under section 411(a)(11) from application of the accelerated payments limitation under section 436(d) and that would provide the Treasury Department with authority to address application of the presumptions under section 436(h) to plans that have valuation dates that are later than the first day of the plan year.[5] Proposed § 1.436–1(d)(6) and § 1.436–1(h)(5), respectively, are reserved in order to accommodate such changes.

Section 1107 of PPA '06 and Code Section 411(d)(6)

Under section 1107 of PPA '06, a plan sponsor is permitted to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of governmental plans). As described in Rev. Proc. 2007–44, 2007–28 IRB 54, this amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. See § 601.601(d)(2) of this chapter. If section 1107 of PPA '06 applies to an amendment of a plan, section 1107 provides that the plan does not fail to meet the requirements of section 411(d)(6) by reason of such amendment, except as provided by the Secretary of the Treasury.[6] For example, section

[5] H.R. 3361 (August 3, 2007) and S. 1974 (August 2, 2007), at sections 2(c)(1)(C), 2(c)(2)(C), 2(c)(1)(F), and 2(c)(2)(F).

[6] Except to the extent permitted under section 411(d)(6) and the § 1.411(d)–4 regulations, or under a statutory provision such as section 1107 of PPA '06, section 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the

Continued

411(d)(6) relief would be available for plan amendments that would prohibit single sum or other accelerated distributions if the plan's AFTAP was less than 60 percent, in accordance with section 436(d) and § 1.436–1(d) of the proposed regulations. Plan sponsors should note that the IRS and the Treasury Department are reviewing whether sample plan amendments should be issued with respect to section 436 and the § 1.436–1 regulations.

ERISA Notice to Participants and Beneficiaries

Under section 101(j) of ERISA, as amended by PPA '06, the plan administrator of a single employer plan is required to provide a written notice to participants and beneficiaries within 30 days after:

- The date the plan has become subject to a restriction described in the ERISA provisions that are parallel to paragraphs (b) and (d) of Code section 436;
- In the case of a plan that is subject to the ERISA provisions that are parallel to paragraph (e) of Code section 436, the valuation date for the plan year for which the plan's AFTAP is less than 60 percent (or, if earlier, the date the AFTAP is presumed to be less than 60 percent under the ERISA provisions that parallel the presumption rules in paragraph (h) of Code section 436); and
- At such other time as may be determined by the Secretary of the Treasury. The notice is required to be provided in writing, except that the notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

Effective/Applicability Dates

1. Section 1.430(f)–1

In general, these regulations under section 430(f) are proposed to apply to plan years beginning on or after January 1, 2008. However, in the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, the regulations under section 430(f) are proposed to apply to plan years beginning on or after the effective date of section 430 with respect to the plan. Unlike section 436, section 430 and the regulations under section 430(f) do not include a delayed effective date for collectively bargained plans.

2. Section 1.436–1

In general, the regulations under section 436 are proposed to apply to plan years beginning on or after January 1, 2008. However, in the case of a plan for which the effective date of section 436 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, the regulations under section 436 are proposed to apply to plan years beginning on or after the effective date of section 436 with respect to the plan. In addition, in the case of a collectively bargained plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before January 1, 2008, the regulations under section 436 would not apply to plan years beginning before the earlier of: (1) the later of the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after August 17, 2006), or the first day of the first plan year to which the proposed regulations under section 436 would otherwise apply, or (2) January 1, 2010. For this purpose, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement under the proposed regulations would not be treated as a termination of the collective bargaining agreement. The determination of whether a plan is a collectively bargained plan is the same as described above in paragraph II.A.5 of this preamble with respect to a plan sponsor's deemed election to reduce funding balances.

3. Reliance on Proposed Regulations

For periods following the issuance of these proposed regulations and before final regulations are issued, these proposed regulations may be relied upon for plan qualification purposes, provided that such reliance is on a consistent and reasonable basis.

4. Effect on Plans Subject to Section 402 of PPA '06

The IRS and the Treasury Department are reviewing the applicability of section 436 and the funding balance rules of section 430(f) to plans that have made elections under section 402 of PPA '06 (taking into account the amendments to section 402 of PPA '06 by section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28)) and any special rules for such plans will be addressed in future guidance.

Special Analyses

It has been determined that 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. It is hereby certified that the collection of information imposed by these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The estimated burden imposed by the collection of information contained in these proposed regulations is 0.75 hours per respondent. Moreover, most of this burden is attributable to the requirement for a qualified defined benefit plan's enrolled actuary to provide a timely certification of the plan's AFTAP for each plan year to avoid certain benefit restrictions, which is imposed by section 436(h) of the Code. In addition, these proposed regulations provide for several written elections to be made by the plan sponsor upon occasion; these written elections will require minimal time to prepare. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (one signed and eight (8) copies) or electronic comments 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. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax

amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate section 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(f)–1 is added to read as follows:

§ 1.430(f)–1 Effect of prefunding balance and funding standard carryover balance.

(a) *In general*—(1) *Overview.* This section provides rules relating to the application of prefunding balances and funding standard carryover balances under section 430(f). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans) that are subject to section 412, but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section sets forth rules regarding a plan sponsor's election to maintain a funding standard carryover balance or a prefunding balance. Paragraph (c) of this section provides rules under which those balances must be subtracted from plan assets. Paragraph (d) of this section describes a plan sponsor's election to use those balances to offset the minimum required contribution. Paragraph (e) of this section describes a plan sponsor's election to reduce those balances (which will affect the determination of the value of plan assets for purposes of sections 430 and 436). Paragraph (f) of this section sets forth rules regarding elections under this section. Paragraph (g) of this section contains examples. Paragraph (h) of this section contains effective/applicability dates and transitional provisions.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, each employer under such a multiple employer plan may have a separate funding standard carryover balance and a prefunding balance for the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of this section are applied as if all participants in the plan were employed by a single employer.

(b) *Election to maintain balances*—(1) *Prefunding balance*—(i) *In general.* A plan sponsor is permitted to maintain a prefunding balance for a plan. A prefunding balance maintained for a plan consists of a beginning balance of zero, increased by the amount of excess contributions to the extent the employer elects to do so as described in paragraph (b)(1)(ii) of this section, and decreased to the extent provided in paragraph (b)(1)(iii) of this section. The prefunding balance is adjusted further for investment return and interest as provided in paragraphs (b)(3) and (b)(4) of this section.

(ii) *Increases*—(A) *In general.* If the plan sponsor of a plan elects to add to the plan's prefunding balance, as of the first day of each plan year following the first effective plan year for the plan, the prefunding balance is increased by the amount so elected by the plan sponsor for the plan year. The amount added to the prefunding balance cannot exceed the interest-adjusted excess contributions for the preceding plan year determined under paragraph (b)(1)(ii)(B) of this section.

(B) *Interest-adjusted excess contribution.* For purposes of this paragraph (b)(1)(ii), the interest-adjusted excess contribution for the preceding plan year is the amount, increased with interest in accordance with the rules of paragraph (b)(1)(iv)(A) of this section, of the excess, if any, of—

(*1*) The present value of the employer contributions (other than contributions to avoid or terminate benefit limitations described in § 1.436–1(f)(2)) to the plan for the preceding plan year determined under the rules of paragraph (b)(1)(iv)(B) of this section; over

(*2*) The minimum required contribution for the preceding plan year (determined without regard to any election to offset the minimum required contribution under paragraph (d) of this section for the preceding plan year).

(iii) *Decreases.* The prefunding balance of a plan is decreased (but not below zero) by the sum of—

(A) As of the first day of each plan year after the first effective plan year for the plan, any amount of the prefunding balance that was used under paragraph (d) of this section to offset the minimum required contribution of the plan for the preceding plan year; and

(B) As of the first day of each plan year, any reduction in the prefunding balance under paragraph (e) of this section for the plan year.

(iv) *Adjustments for interest*—(A) *Adjustment of excess contribution.* The amount of the excess contribution for the preceding year (as determined under paragraph (b)(1)(ii)(B) of this section) is increased for interest accruing for the period between the valuation date for the preceding plan year and the first day of the current year. For this purpose, interest is determined by using the plan's effective interest rate under section 430(h)(2)(A) for the preceding plan year.

(B) *Determination of present value.* The present value of the contributions described in paragraph (b)(1)(ii)(B)(*1*) of this section is determined as of the valuation date for the preceding plan year, using the plan's effective interest rate under section 430(h)(2)(A) for the preceding plan year.

(2) *Funding standard carryover balance*—(i) *In general.* A funding standard carryover balance is only permitted to be maintained by a plan that had a positive balance in the funding standard account under section 412(b) as of the end of the pre-effective plan year for the plan. The funding standard carryover balance as of the beginning of the first effective plan year for the plan is the positive balance in the funding standard account under section 412(b) as of the end of the pre-effective plan year for the plan, decreased to the extent provided in paragraph (b)(2)(ii) of this section and adjusted further for investment return and interest as provided in paragraphs (b)(3) and (b)(4) of this section.

(ii) *Decreases.* The funding standard carryover balance of a plan is decreased (but not below zero) by the sum of—

(A) As of the first day of each plan year after the first effective plan year for the plan, any amount of the funding standard carryover balance that was used under paragraph (d) of this section to offset the minimum required contribution of the plan for the preceding plan year; and

(B) As of the first day of each plan year, any reduction in the funding standard carryover balance under paragraph (e) of this section for the plan year.

(3) *Adjustments for investment experience.* In determining a plan's prefunding balance under paragraph (b)(1) of this section or a plan's funding standard carryover balance under paragraph (b)(2) of this section as of the first day of a plan year, the balance must be adjusted to reflect the actual rate of return on plan assets for the preceding

plan year. This adjustment is applied to the balance after subtracting amounts used to offset the minimum required contribution for the preceding plan year pursuant to paragraph (d) of this section and after any reduction of balances for that preceding plan year under paragraph (e) of this section. For this purpose, the actual rate of return on plan assets for the preceding plan year is determined on the basis of fair market value and must take into account the amount and timing of all contributions, distributions, and other plan payments made during that period.

(4) *Valuation date other than the first day of the plan year*—(i) *In general.* If a plan's valuation date is not the first day of the plan year, solely for purposes of applying paragraphs (c), (d), and (e) of this section, the plan's prefunding balance and funding standard carryover balance (if any) determined under this paragraph (b) are increased to the valuation date using the plan's effective interest rate under section 430(h)(2)(A) for the plan year.

(ii) *Special rule for adjustments for investment experience.* For purposes of applying the rules regarding the adjustments for investment experience in paragraph (b)(3) of this section, in the case of a plan with a valuation date that is not the first day of the plan year, the amount of the funding balances that must be subtracted from plan assets under paragraph (d) of this section (because they are used to offset the minimum required contribution for the plan year) must be adjusted to the first day of the plan year using the effective interest rate under section 430(h)(2)(A) for that year.

(c) *Effect of balances on plan assets*—(1) *In general.* In the case of any plan with a prefunding balance or a funding standard carryover balance, the amount of those balances must be subtracted from the value of plan assets for purposes of sections 430 and 436, except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(2) *Subtraction of balances in determining new shortfall amortization base—(i) Prefunding balance.* For purposes of determining whether a plan is exempt from the requirement to establish a new shortfall amortization base under section 430(c)(5), the amount of the prefunding balance is subtracted from the value of plan assets only if an election under paragraph (d) of this section to use the prefunding balance to offset the minimum required contribution is made for the plan year.

(ii) *Funding standard carryover balance.* For purposes of determining whether a plan is exempt from the requirement to establish a new shortfall amortization base under section 430(c)(5), the funding standard carryover balance is not subtracted from the value of plan assets regardless of whether any portion of either the funding standard carryover balance or the prefunding balance is used to offset the minimum required contribution for the plan year under paragraph (d) of this section.

(3) *Special rule for certain binding agreements with PBGC.* If there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation (PBGC) which provides that all or a portion of the prefunding balance or funding standard carryover balance (or both balances) is not available to offset the minimum required contribution for a plan year, that specified amount is not subtracted from the value of plan assets for purposes of determining the funding shortfall under section 430(c)(4). For example, if a PBGC agreement provides that $5 million of a plan's balances is unavailable to offset the minimum required contribution for a plan year, the sum of the plan's prefunding balance and funding standard carryover balance is $20 million, and the plan's assets are $100 million, the value of plan assets for purposes of determining the funding shortfall under section 430(c)(4) is reduced by $15 million ($20 million less $5 million) to $85 million. For purposes of this paragraph (c)(3), an agreement with the PBGC is taken into account with respect to a plan year only if the agreement was executed prior to the valuation date for the plan year.

(4) *Exception for section 436(j) and (k) special adjustment rules.* See section 436(j) and (k) and § 1.436–1(j)(2)(ii) and (iii) for exceptions from the requirement to subtract the prefunding and funding standard carryover balances from plan assets in determining a plan's funding target attainment percentage for purposes of section 436.

(d) *Election to apply balances against minimum required contribution*—(1) *In general.* Subject to the limitations provided in paragraphs (d)(2) and (d)(3) of this section, in the case of any plan year in which the plan sponsor elects to use all or a portion of the prefunding balance or the funding standard carryover balance to offset the minimum required contribution for the current plan year, the minimum required contribution for the plan year (determined after taking into account any waiver under section 412(c)) is offset as of the valuation date for the plan year by the amount so used.

(2) *Requirement to use funding standard carryover balance before prefunding balance.* To the extent that a plan has a funding standard carryover balance greater than zero, no amount of the plan's prefunding balance may be used to offset the minimum required contribution. Thus, a plan's funding standard carryover balance must be exhausted before the plan's prefunding balance may be applied under paragraph (d)(1) of this section to offset the minimum required contribution.

(3) *Limitation for underfunded plans.* An election to apply a funding standard carryover balance or a prefunding balance under paragraph (d)(1) of this section is not available for a plan year if the plan's prior year funding ratio is less than 80 percent. For purposes of this paragraph (d)(3), except as provided in paragraph (h)(5) of this section, the plan's prior year funding ratio is the fraction (expressed as a percentage)—

(i) The numerator of which is the value of plan assets on the valuation date for the preceding plan year, reduced by the amount of any prefunding balance (but not the amount of any funding standard carryover balance); and

(ii) The denominator of which is the funding target of the plan for the preceding plan year (determined without regard to section 430(i)(1)).

(e) *Election to reduce balances*—(1) *In general.* A plan sponsor may make an election for a plan year to reduce any portion of a plan's prefunding balance and funding standard carryover balance under this paragraph (e). If such an election is made, the amount of those balances that must be subtracted from plan assets pursuant to paragraph (c)(1) of this section will be smaller and, accordingly, the plan assets taken into account for purposes of sections 430 and 436 will be larger. Thus, this election to reduce a plan's prefunding balance and funding standard carryover balance is taken into account in the determination of plan assets for the plan year and applies for all purposes under sections 430 and 436, including for purposes of determining the plan's prior year funding ratio under paragraph (d)(3) of this section for the following plan year. See also section 436(f)(3) and § 1.436–1(a)(5) for a rule under which the plan sponsor is deemed to make the election described in this paragraph (e).

(2) *Coordination between prefunding balance and funding standard carryover balance.* To the extent that a plan has a funding standard carryover balance greater than zero, no election under paragraph (e)(1) of this section is permitted to be made that reduces the plan's prefunding balance. Thus, a plan must exhaust its funding standard carryover balance before it is permitted to make an election under paragraph

(e)(1) of this section with respect to its prefunding balance.

(f) *Elections*—(1) *Method of making elections.* Any election under this section by the plan sponsor must be made by providing written notification of the election to the plan's enrolled actuary and the plan administrator. The written notification must set forth the relevant details of the election, including the specific amounts involved in the election with respect to the prefunding balance and funding standard carryover balance.

(2) *Timing of elections*—(i) *General rule.* Except as provided in paragraph (f)(2)(ii) of this section, any election under this section must be made on or before the due date (with extensions) for the filing of the plan's Form 5500 ''Annual Return/Report of Employee Benefit Plan'' for the plan year to which the election relates (or, in the case of a plan not required to file a Form 5500 for the plan year, on or before the last day of the seventh month after the end of the plan year to which the election relates). For this purpose, an election to add to the prefunding balance relates to the plan year for which excess contributions were made. For example, in the case of a plan required to file a Form 5500, an election to add to the prefunding balance as of the first day of the 2010 plan year (in an amount not in excess of the 2009 interest-adjusted excess contributions under the rules of paragraph (b)(1)(ii) of this section) must be made no later than the due date for filing the 2009 Form 5500 even though the election is reported on the 2010 Form 5500 (Schedule SB).

(ii) *Election to reduce balances.* Any election under paragraph (e) of this section to reduce the prefunding balance or funding standard carryover balance for a plan year (for example, in order to avoid a benefit restriction under section 436) must be made by the end of the plan year to which the election relates.

(3) *Irrevocability of elections.* A plan sponsor's election under this section with respect to the plan's funding standard carryover balance or prefunding balance is irrevocable (and must be unconditional).

(4) *Plan sponsor*—(i) *In general.* For purposes of the elections described in this section, except as provided in paragraph (f)(4)(ii) of this section, any reference to the plan sponsor means the employer or employers responsible for making contributions to or under the plan.

(ii) *Certain multiple employer plans.* For purposes of the elections described in this section, in the case of plans that are multiple employer plans to which section 413(c)(4)(A) does not apply, any reference to the plan sponsor means the plan administrator within the meaning of section 414(g).

(g) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) Plan P is a defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The funding standard carryover balance of Plan P is $25,000 as of the beginning of the 2008 plan year. The sponsor of Plan P, Sponsor S, does not elect in 2008, pursuant to paragraph (e)(1) of this section, to reduce any portion of the funding standard account carryover balance prior to the determination of the value of plan assets. The actual rate of return on plan P's assets in 2008 is 2%. The effective interest rate in 2008 for plan P is 6%. The minimum required contribution for Plan P under section 430 for 2008 is $100,000. The prior year funding ratio for Plan P for 2008, as determined under paragraph (h)(5) of this section, is not less than 80%.

(ii) Sponsor S makes a contribution to Plan P of $150,000 on December 1, 2008, for the 2008 plan year and makes no other contributions for the 2008 plan year. Because this contribution was made on a date other than the valuation date for the 2008 plan year, the contribution must be adjusted to reflect interest that would otherwise have accrued between the valuation date and the date of the contribution, at the effective rate of interest for the 2008 plan year. The amount of the contribution after adjustment is $142,198, determined as $150,000 discounted for 11 months of compound interest at an effective annual interest rate of 6%.

(iii) The excess of employer contributions for 2008 over the minimum required contribution for 2008, as of the valuation date, is $42,198 ($142,198 less $100,000). Accordingly, the increase in Plan P's prefunding balance as of January 1, 2009, cannot exceed $44,730 (which is the excess contribution of $42,198 adjusted for 12 months of interest at an effective interest rate of 6%).

(iv) Furthermore, if Sponsor S does not elect to apply any portion of the funding standard carryover balance toward the minimum contribution in 2008, the funding standard carryover balance as of January 1, 2009, is $25,500 (which is the funding standard account balance as of January 1, 2008, adjusted for investment experience at an effective interest rate of 2%).

Example 2. (i) The facts are the same as in *Example 1* except that the contribution of $150,000 is made on February 1, 2009, for the 2008 plan year.

(ii) The amount of the contribution after adjustment is $140,824, which is determined as $150,000 discounted for 13 months of interest at an effective interest rate of 6%. Accordingly, the increase in Plan P's prefunding balance as of January 1, 2009, cannot exceed $43,273 (which is the excess contribution of $40,824 adjusted for 12 months of interest at an effective interest rate of 6%).

Example 3. (i) The facts are the same as in *Example 1* except that Sponsor S contributes $85,000 to Plan P on January 1, 2008, for the 2008 plan year and makes no other contributions to Plan P for the 2008 plan year. In addition, Sponsor S elects to use $15,000 of the funding standard carryover balance to offset P's minimum required contribution in 2008, pursuant to paragraph (d)(1) of this section.

(ii) With respect to the 2009 plan year, the adjustment for investment experience under paragraph (b)(3) of this section for the funding standard carryover balance for the preceding plan year is $200, determined as the actual rate of return on plan assets for 2008 as applied to the 2008 funding standard carryover balance after reduction for the amount of that balance used under paragraph (d)(1) of this section (that is, $25,000 less $15,000, multiplied by the actual rate of return of 2%).

(iii) The funding standard carryover balance, as of January 1, 2009, is $10,200, determined as the 2008 funding standard carryover balance less the amount used to offset the 2008 minimum required contribution, adjusted for investment experience during the 2008 year ($25,000 less $15,000 plus $200).

Example 4. (i) The facts are the same as in *Example 3* except that Sponsor S contributes $90,000 (instead of $85,000) to Plan P on January 1, 2008, for the 2008 plan year.

(ii) Notwithstanding the fact that the amount that Sponsor S contributed to Plan P exceeds the minimum required contribution ($85,000) after it has been offset as a result of the use of the funding standard carryover balance, the maximum amount that Sponsor S may add to the prefunding balance as of January 1, 2009, is $0. This is because the maximum amount that may be added to the prefunding balance is the excess of $90,000 over $100,000. See paragraphs (b)(1)(ii)(A) and (B) of this section.

Example 5. (i) Plan Q is a defined benefit plan with a plan year that is the calendar year and a valuation date of July 1. The funding standard carryover balance of Plan Q is $50,000 as of January 1, 2009, the beginning of the 2009 plan year. The prefunding balance of Plan Q as of the beginning of the 2009 plan year is $0. The actual rate of return on plan Q's assets in 2009 is 10%. The effective interest rate for Plan Q for 2009 is 5%. The funding ratio for Plan Q in 2008 is 85%, as determined under paragraph (d)(3) of this section. Thus, the prior year funding ratio for 2009 is not less than 80%.

(ii) Pursuant to paragraph (b)(4) of this section, the funding standard carryover balance is increased to $51,235 as of July 1, 2009 (that is, an increase to reflect 6 months of interest at an effective interest rate of 5%). Sponsor T does not elect in 2009 to reduce any portion of the funding standard carryover balance pursuant to paragraph (e) of this section. The funding standard carryover balance ($51,235) is subtracted from the value of plan assets, as of July 1, 2009, prior to the determination of the minimum funding contribution and, accordingly, $51,235 is the maximum amount that may be applied against the minimum required contribution.

(iii) The minimum required contribution for Plan Q for 2009 is $200,000. Sponsor T

makes a contribution to Plan T of $190,000 on July 1, 2009, for the 2009 plan year, and makes no other contributions for the 2009 plan year. Sponsor T elects to use $10,000 of the funding standard carryover balance to offset Plan Q's minimum required contribution in 2009. Accordingly, the value of the funding standard carryover balance as of July 1, 2009, prior to adjustment for investment experience, is $41,235 (that is, $51,235 less $10,000).

(iv) The value of the funding standard carryover balance as of January 1, 2010, is determined by first discounting the value as of July 1, 2009, after amounts have been used to offset the minimum required contribution, to January 1, 2009, at the effective interest rate and then crediting this so determined amount with a full year's investment experience at a rate equal to the actual rate of return. Thus, the July 1, 2009, value of $41,235 is discounted for 6 months of interest, at an effective interest rate of 5%, to obtain a January 1, 2009, value of $40,241. Accordingly, the value of the funding standard carryover balance as of January 1, 2010, is $44,265 (that is, $40,241 increased with one year's investment return at a rate of 10%).

(h) *Effective/applicability date and transition rules*—(1) *General effective/applicability date.* Except as provided in paragraph (h)(2) of this section, this section applies to plan years beginning on or after January 1, 2008.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, this section applies to plan years beginning on or after the effective date of section 430 with respect to the plan.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which this section applies under paragraph (h)(1) or (h)(2) of this section.

(4) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before the first effective date applicable under paragraph (h)(1) or (h)(2) of this section. Thus, except for plans with a delayed effective date under paragraph (h)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(5) *Special lookback rule for pre-effective plan year's funding ratio*—(i) *Plan assets.* For purposes of determining a plan's prior year funding ratio pursuant to paragraph (d)(3) of this section for the first effective plan year, the value of plan assets on the valuation date of the preceding plan year is determined under section 412(c)(2) as in effect for that pre-effective plan year, except that—

(A) If the value of plan assets is less than 90 percent of the fair market value of plan assets for the pre-effective plan year on that date, for this purpose such value is considered to be 90 percent of the fair market value; and

(B) If the value of plan assets is greater than 110 percent of the fair market value of plan assets on the valuation date for the pre-effective plan year on that date, for this purpose such value is considered to be 110 percent of the fair market value.

(ii) *Funding target.* For purposes of determining a plan's prior year funding ratio pursuant to paragraph (d)(3) of this section for the first effective plan year, the funding target of the plan for the preceding plan year is equal to the plan's current liability under section 412(l)(7) on the valuation date for the plan's pre-effective plan year.

Par. 3. Section 1.436–1 is added to read as follows:

§ 1.436–1 Limits on benefits and benefit accruals under single employer defined benefit plans.

(a) *General rules*—(1) *Qualification requirement.* Section 401(a)(29) provides that a defined benefit pension plan that is subject to section 412 and that is not a multiemployer plan (within the meaning of section 414(f)) is a qualified plan only if it satisfies the requirements of section 436. This section provides rules relating to funding-based limitations on certain benefits under section 436, and the requirements of section 436 are satisfied only if the plan meets the requirements of this section beginning with the plan's first effective plan year. This section applies to single employer defined benefit plans (including multiple employer plans), but does not apply to multiemployer plans.

(2) *Organization of the regulation.* Paragraph (b) of this section describes a limitation on shutdown benefits and other unpredictable contingent event benefits. Paragraph (c) of this section describes limitations on plan amendments increasing liabilities. Paragraph (d) of this section describes limitations on accelerated benefit payments. Paragraph (e) of this section describes limitations on benefit accruals. Paragraph (f) of this section provides rules relating to methods to avoid benefit limitations. Paragraph (g) of this section provides rules for the operation of the plan in relation to benefit limitations under section 436. Paragraph (h) of this section describes related presumptions regarding underfunding that apply for purposes of the benefit limitations under section 436. Paragraph (j) of this section contains definitions. Paragraph (k) of this section contains effective/applicability date provisions.

(3) *Special rules for certain plans*—(i) *New plans.* The limitations described in paragraphs (b), (c), and (e) of this section do not apply to a plan for the first 5 plan years of the plan. For purposes of applying this rule, plan years of a plan are aggregated with plan years of a predecessor plan in accordance with section 414(a) or § 1.415(f)–1(c).

(ii) *Multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, this section applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under this section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), this section applies as if all participants in the plan were employed by a single employer.

(4) *Treatment of plan as of close of prohibited or cessation period*—(i) *Resumption of benefit payments and accruals*—(A) *Resumption of accelerated payments.* If a limitation on accelerated benefit payments under paragraph (d) of this section applied to a plan as of a section 436 measurement date, but that limit no longer applies to the plan as of a later section 436 measurement date, then the prohibition on paying accelerated benefits under the plan does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date. Any amendment to eliminate the payment of accelerated benefit payments for periods in which they are not restricted under section 436 is subject to the rules of section 411(d)(6).

(B) *Resumption of benefit accruals.* Unless the plan provides otherwise, benefit accruals under the plan resume effective as of the section 436 measurement date on which benefit accruals are no longer restricted under paragraph (e) of this section.

(ii) *Missed benefit payments and accruals*—(A) *Option to amend plan to restore benefits.* A plan is permitted to be amended to provide participants who had an annuity starting date within a period during which the rules of paragraph (d) of this section applied to the plan with the opportunity to have a new election under which the form of benefit previously elected may be

modified, subject to applicable qualification requirements. A participant who makes such a new election is treated as having a new annuity starting date under section 417. Similarly, a plan is permitted to be amended to provide that any benefit accruals which were limited under the rules of paragraph (e) of this section are credited under the plan when the limitation no longer applies, subject to applicable qualification requirements. Any such plan amendment with respect to a new annuity starting date or crediting of benefit accruals is subject to the requirements of section 436(c) and paragraph (c) of this section.

(B) *Automatic plan provisions to restore benefits.* A plan is permitted to provide that participants who had an annuity starting date within a period during which the rules of paragraph (d) of this section applied to the plan are automatically provided with the opportunity to have a new annuity starting date (which would constitute a new annuity starting date under section 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the rules of paragraph (d) of this section cease to apply. In addition, a plan is permitted to provide for the automatic restoration of benefit accruals that had been limited under section 436(e) as of the section 436 measurement date that the limitation ceases to apply, as described in paragraph (a)(4)(ii)(A) of this section. However, if a plan provides for the automatic restoration of those benefit accruals and the period of the limitation exceeds 12 months, the plan will be treated as having adopted, effective as of the section 436 measurement date on which the limitation ceases to apply, a plan amendment that has the effect of increasing liabilities under the plan. Such an amendment is subject to the limitations of paragraph (c) of this section.

(iii) *Shutdown and other unpredictable contingent event benefits*—(A) *In general.* If any unpredictable contingent event benefits under paragraph (b) of this section are limited with respect to an unpredictable contingent event, that limitation applies to all such benefits that otherwise would have been paid to any plan participant with respect to that unpredictable contingent event.

(B) *Benefits not paid.* Notwithstanding paragraph (a)(4)(iii)(A) of this section, a plan is permitted to be amended to provide that any unpredictable contingent event benefits that were limited under the rules of paragraph (b) of this section will be paid or reinstated as of the section 436 measurement date on which the limitation no longer applies, subject to applicable qualification requirements. Such a plan amendment is subject to the requirements of section 436(c) and paragraph (c) of this section. A plan is not permitted to provide for restoration of any such unpredictable contingent event benefits without an amendment that complies with section 436(c).

(iv) *Example.* The following example illustrates the application of this paragraph (a)(4):

Example. (i) Plan T is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. As of January 1, 2011, Plan T does not have a funding standard carryover balance or a prefunding balance. Plan T's sponsor is not in bankruptcy. Beginning January 1, 2011, Plan T is subject to the restriction on accelerated benefit distributions under paragraph (d)(3) of this section based on a presumed adjusted funding target attainment percentage (AFTAP) of 75%, and can therefore only pay a portion (generally 50%) of the accelerated benefit distributions otherwise payable to participants who commence benefit payments while the restriction is in effect.

(ii) U is a participant in Plan T. Participant U retires on February 1, 2011, and elects to receive benefits in the form of a single sum. However, because U elected a form of payment that is a prohibited payment that is not permitted to be paid under paragraph (d)(3)(i) of this section, U elects in accordance with paragraph (d)(3)(ii) of this section to receive 50% of his benefit in a single sum and the remainder as an immediately commencing straight life annuity.

(iii) On March 1, 2011, the enrolled actuary for the Plan certifies that the AFTAP for 2011 is 80%. Accordingly, beginning March 1, 2011, Plan T is no longer subject to the restriction under paragraph (d)(3) of this section.

(iv) Effective March 1, 2011, Plan T is amended to provide that a participant whose benefits were restricted under paragraph (d)(3) of this section may elect within a specified period on or after March 1, 2011, a new annuity starting date and receive the remainder of his or her pension benefits in an accelerated form of payment. Plan T's enrolled actuary determines that the AFTAP, taking into account the amendment, is still 80%. The amendment is permitted to take effect because Plan T has an AFTAP of 80% taking into account the amendment, and is therefore neither subject to the restriction on plan amendments in paragraph (c) of this section nor the restrictions on accelerated benefit payments under paragraphs (d)(1) and (d)(3) of this section. Accordingly, Participant U may elect, subject to otherwise applicable qualification rules, including spousal consent, to receive the remainder of his benefits in the form of a single sum on or after March 1, 2011.

(5) *Deemed election to reduce funding balances*—(i) *Limitations on accelerated benefit payments.* If a benefit limitation under paragraph (d) of this section would (but for this paragraph (a)(5)) apply to a plan, the employer is treated as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for the adjusted funding target attainment percentage to be at or above the applicable threshold (60, 80, or 100 percent, as the case may be) in order for the benefit limitation not to apply to the plan. In such a case, the employer is treated as having made that election on the section 436 measurement date as of which the benefit limitation would otherwise apply (without regard to whether a participant is eligible for or requests a payment that is a prohibited payment described in paragraph (d)(5) of this section).

(ii) *Other limitations for collectively bargained plans*—(A) *General rule.* In the case of a collectively bargained plan to which a benefit limitation under paragraph (b), (c), or (e) of this section would (but for this paragraph (a)(5)) apply, the employer is treated as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for the adjusted funding target attainment percentage to be at or above the applicable threshold in order for the benefit limitation not to apply to the plan, taking into account the unpredictable contingent event benefits or plan amendment, as applicable. In such a case, the employer is treated as having made that election on the date as of which the applicable benefit limitation would otherwise apply.

(B) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan with respect to which collective bargaining agreements apply to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of this paragraph (a)(5)(ii) if at least 25 percent of the participants in the plan are members of collective bargaining units for which the benefit levels under the plan are specified under a collective bargaining agreement.

(iii) *Exception for insufficient funding balances*—(A) *In general.* Paragraphs (a)(5)(i) and (a)(5)(ii) of this section apply with respect to a benefit limitation for any plan year only if the application of those paragraphs would result in the corresponding benefit limitation not applying for such plan year. Thus, if the plan's prefunding and funding standard carryover balances were reduced to zero and the resulting

increase in plan assets taken into account would still not increase the plan's adjusted funding target attainment percentage enough to reach the threshold percentage applicable to the benefit limitation, the deemed election to reduce those balances pursuant to paragraph (a)(5)(i) or (a)(5)(ii) of this section does not apply.

(B) *Presumed adjusted funding target attainment percentage less than 60 percent.* If a plan is presumed to have an adjusted funding target attainment percentage of less than 60 percent under paragraph (h)(3) of this section, then the plan is treated as if the funding standard carryover balance and the prefunding balance are insufficient to increase the adjusted funding target attainment percentage to the threshold percentage of 60 percent. Accordingly, paragraphs (a)(5)(i) and (a)(5)(ii) of this section do not apply to such a plan.

(iv) *Example.* The following example illustrates the application of this paragraph (a)(5):

Example. (i) Plan W is a collectively bargained, single-employer defined benefit plan sponsored by Sponsor X, with a plan year that is the calendar year and a valuation date of January 1. Sponsor X is not in bankruptcy.

(ii) The enrolled actuary for Plan W issues a certification on March 1, 2010, that the 2010 AFTAP is 81%. Sponsor X adopts an amendment on March 25, 2010, to increase benefits under a formula based on participant compensation, with an effective date of May 1, 2010. (Because the formula is based on compensation, the exception in paragraph (c)(3) of this section for increases with respect to a formula not based on compensation does not apply.) The plan's enrolled actuary determines that the plan's AFTAP for 2010 would be 75% if the benefits attributable to the plan amendment were taken into account. This percentage is below the 80% threshold for the plan amendment limitation under paragraph (c) of this section.

(iii) Because the AFTAP would be below the 80% threshold if the benefits attributable to the plan amendment were taken into account, Sponsor X is deemed to have made an election under paragraph (a)(5)(ii) of this section to reduce Plan W's prefunding balance and funding standard carryover balance by the amount necessary for the AFTAP to reach the 80% threshold (reflecting the increase in funding target attributable to the plan amendment) in order for the limitation under paragraph (c) of this section not to apply.

(iv) In this case, provided the reduction in funding balances is sufficient for the limitation not to apply, the plan amendment will go into effect on its effective date (May 1). See paragraph (f) of this section for other methods to avoid benefit limitations (where, for example, the amount necessary for a benefit limitation not to apply for a plan year exceeds the aggregate funding balances).

(b) *Limitation on shutdown benefits and other unpredictable contingent event benefits*—(1) *In general.* A plan that contains an unpredictable contingent event benefit satisfies section 436(b) and this section only if it provides that the benefit will not be paid to a plan participant during a plan year if the adjusted funding target attainment percentage for the plan year—

(i) Is less than 60 percent; or

(ii) Is 60 percent or more, but would be less than 60 percent if the benefits attributable to the unpredictable contingent event were taken into account in determining the adjusted funding target attainment percentage.

(2) *Exemption*—(i) *In general.* The prohibition on payment of unpredictable contingent event benefits under paragraph (b)(1) of this section ceases to apply with respect to a plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of the contribution described in paragraph (f)(2) of this section.

(ii) *Prior unpredictable contingent event.* Unpredictable contingent event benefits attributable to an unpredictable contingent event that occurred within a period during which no limitation under this paragraph (b) applied to the plan are not affected by the limitation described in this paragraph (b) as it applies in a subsequent period. For example, if a plant shutdown occurs in 2010 and the plan's funded status is such that shutdown benefits related to that shutdown are not subject to the limitation described in this paragraph (b) for that calendar plan year, this paragraph (b) will not apply to restrict payment of those shutdown benefits even if another shutdown occurs in 2012 that results in shutdown benefits related to that later shutdown being restricted under this paragraph (b) (where the plan's adjusted funding target attainment percentage for 2012 is less than 60 percent taking into account the liability attributable to those shutdown benefits).

(3) *Unpredictable contingent event.* For purposes of this section, an *unpredictable contingent event benefit* means any benefit or increase in benefits to the extent the benefit or increase would not be payable but for the occurrence of an unpredictable contingent event. For this purpose, an *unpredictable contingent event* means a plant shutdown (whether full or partial) or similar event, or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability. Thus, for example, if a plan provides for an unreduced early retirement benefit upon the occurrence of an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, then that unreduced early retirement benefit is an unpredictable contingent event benefit to the extent of any portion of the benefit that would not be payable but for the occurrence of the event, even if the remainder of the benefit is payable without regard to the occurrence of the event. Similarly, if a plan includes a benefit payable upon the presence of circumstances specified in the plan (other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability), but not upon a severance from employment that does not include those circumstances, the plan is providing an unpredictable contingent event benefit.

(c) *Limitations on plan amendments increasing liability for benefits*—(1) *In general.* Except as provided in this paragraph (c), a plan satisfies section 436(c) and this section only if the plan provides that no amendment to the plan that has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable takes effect if the adjusted funding target attainment percentage for the plan year is—

(i) Less than 80 percent; or

(ii) Is 80 percent or more, but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

(2) *Exemption.* The limitations on plan amendments in paragraph (c)(1) of this section cease to apply and the amendment is permitted to take effect as of the later of the first day of the plan year or the effective date of the amendment upon payment by the plan sponsor of the contribution described in paragraph (f)(2) of this section.

(3) *Exception for certain benefit increases*—(i) *In general.* The limitation on plan amendments under paragraph (c)(1) of this section does not apply to any amendment that provides for an increase in benefits under a formula that is not based on a participant's compensation, but only if the rate of increase in benefits does not exceed the contemporaneous rate of increase in average wages of participants covered by the amendment. The determination of the rate of increase in average wages is made by taking into consideration the net increase in average wages from the period of time beginning with the

effective date of the most recent benefit increase applicable to all of those participants who are covered by the current amendment and ending on the effective date of the current amendment.

(ii) *Application to terminated participants.* If an amendment applies to both currently employed and terminated participants, all such participants must be included in determining the increase in average wages of the participants covered by the amendment. For this purpose, terminated participants are treated as having no increase or decrease in wages for the period after severance from employment.

(iii) *Separate amendments for different plan populations.* In lieu of a single amendment that applies to both currently employed participants and terminated participants as described in paragraph (c)(3)(ii) of this section, the employer could adopt two amendments—one that increases benefits for currently employed participants and another one that increases benefits for terminated participants. In that case, the two amendments are considered separately in determining the increase in average wages, and the exception in this paragraph (c)(3) from application of the section 436(c) limitation would apply separately to each amendment (so that an amendment providing for increases in benefits for currently employed participants could go into effect, but an amendment providing for increases in benefits for terminated participants who received no increase in wages from the employer during the period over which the increase in average wages is determined could not go into effect).

(4) *Exception for statutorily required vesting.* To the extent that any amendment results in (or is made pursuant to) a mandatory increase in the vesting of benefits under the Code or ERISA (such as vesting rate increases pursuant to statute, plan termination amendments under section 411(d)(3), and amendments that lead to vesting increases required by top heavy rules under section 416), that amendment does not constitute an amendment that changes the rate at which benefits become nonforfeitable for purposes of section 436(c) and this paragraph (c).

(d) *Limitations on accelerated benefit payments*—(1) *Funding percentage less than 60 percent*—(i) *In general.* A plan satisfies the requirements of section 436(d)(1) and this paragraph (d)(1) only if the plan provides that, if the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan will not pay any prohibited payment with an annuity starting date on or after the applicable section 436 measurement date.

(ii) *Request for prohibited distribution.* If a participant or beneficiary requests a distribution that is prohibited under paragraph (d)(1)(i) of this section, the plan must permit the participant or beneficiary to elect another form of benefit available under the plan or to defer payment to a later date to the extent permitted under applicable qualification requirements.

(2) *Bankruptcy.* A plan satisfies the requirements of section 436(d)(2) and this paragraph (d)(2) only if the plan provides that the plan will not pay any prohibited payment with an annuity starting date that is during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made with an annuity starting date within a plan year that is on or after the date on which the enrolled actuary of the plan certifies that the plan's adjusted funding target attainment percentage for that plan year is not less than 100 percent. The rules of paragraph (d)(1)(ii) of this section apply if payments are prohibited under this paragraph (d)(2).

(3) *Limited payment if percentage at least 60 percent but less than 80 percent*—(i) *In general.* A plan satisfies the requirements of section 436(d)(3) and this paragraph (d)(3) only if the plan provides that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or more but is less than 80 percent, a participant or beneficiary is permitted to elect the payment of a benefit with an annuity starting date on or after the applicable section 436 measurement date in the form of a prohibited payment only if the present value, determined in accordance with section 417(e)(3), of the portion of the payment that is greater than the amount of the straight life annuity under the plan (as described in paragraph (d)(5)(i)(A) of this section) does not exceed the lesser of—

(A) 50 percent of the present value of the benefits, determined in accordance with section 417(e)(3) (or, if greater, 50 percent of the amount of any single sum that would be payable without regard to this paragraph (d)); or

(B) 100 percent of the PBGC guarantee amount described in paragraph (d)(3)(iv) of this section.

(ii) *Bifurcation if optional form unavailable*—(A) *General rule.* If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the annuity starting date because of the application of paragraph (d)(3)(i) of this section, then the plan must provide a participant or beneficiary who elects such an optional form with the option either to defer payment to a later date (to the extent permitted under applicable qualification requirements) or to bifurcate the benefit into unrestricted and restricted portions. If the participant or beneficiary elects to bifurcate the benefit, the plan must permit the participant or beneficiary to elect, with respect to the unrestricted portion, any optional form of benefit otherwise available under the plan with respect to the participant's or beneficiary's entire benefit (whether or not the optional form of benefit with respect to the unrestricted portion is a prohibited payment). In such a case, if the participant or beneficiary elects payment of the unrestricted portion of the benefit described in paragraph (d)(3)(ii)(B) of this section in the form of a prohibited payment, the plan must permit the participant or beneficiary to elect payment of the restricted portion described in paragraph (d)(3)(ii)(C) of this section in any optional form of benefit under the plan that is not a prohibited payment and that would have been permitted with respect to the participant's or beneficiary's entire benefit. A plan is also permitted to offer optional forms of benefit that are solely available during the period this paragraph (d)(3) applies to the plan, such as an optional form of benefit that provides for the current payment of the unrestricted portion of the benefit, with a delayed commencement for the restricted portion of the benefit, subject to other applicable qualification requirements.

(B) *Unrestricted portion of the benefit.* The unrestricted portion of the benefit is the lesser of—

(*1*) 50 percent of the benefit; and

(*2*) The portion of the benefit that has a present value equal to the PBGC guarantee amount described in paragraph (d)(3)(iv) of this section.

(C) *Restricted portion of the benefit.* The restricted portion of the benefit is the portion of the benefit that is not described in paragraph (d)(3)(ii)(B) of this section.

(iii) *One-time application*—(A) *In general.* A plan satisfies the requirements of this paragraph (d) only if the plan provides that, in the case of a participant who receives a prohibited payment (or series of prohibited payments under a single optional form of benefit) pursuant to paragraph (d)(3)(i) or (ii) of this section, the participant cannot thereafter receive any additional prohibited payment during any period of consecutive plan years to which the limitations under either this

paragraph (d)(3), paragraph (d)(1) of this section, or paragraph (d)(2) of this section apply.

(B) *Treatment of beneficiaries.* For purposes of this paragraph (d)(3), benefits provided to a participant and any beneficiary (including an alternate payee, as defined in section 414(p)(8)) are aggregated. If the accrued benefit of a participant is allocated to such an alternate payee and one or more other persons, the unrestricted amount under paragraphs (d)(3)(i) and (d)(3)(ii) of this section is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in section 414(p)(1)(A)) with respect to the participant or the alternate payee provides otherwise.

(iv) *Present value of PBGC maximum benefit guarantee.* The amount described in this paragraph (d)(3)(iv) is, with respect to a participant, the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum benefit guarantee under section 4022 of the Employee Retirement Income Security Act of 1974, as amended.

(v) *Examples.* The following examples illustrate the application of this paragraph (d)(3):

Example 1. (i) Plan A is subject to the restriction on accelerated benefit distributions under paragraph (d)(3) of this section for the 2010 plan year, and can therefore only pay a portion of the accelerated benefit payments otherwise payable to participants whose annuity starting date occurs while the restriction applies.

(ii) Participant P is not married, and retires at age 65 during 2010, while the restriction under paragraph (d)(3) of this section applies to Plan A. P's accrued benefit is $10,000 per month, payable commencing at age 65 as a straight life annuity. Plan A provides for an optional single sum payment (subject to the restrictions under section 436) equal to the present value of the participant's accrued benefit using actuarial assumptions under section 417(e). P's single sum payment, determined without regard to this paragraph (d), is calculated to be $1,416,000, payable at age 65.

(iii) The PBGC guaranteed monthly benefit for a straight life annuity payable at age 65 in 2010 (for purposes of this example) is $4,500. The present value of the PBGC guaranteed benefit using actuarial assumptions under section 417(e) is $637,200.

(iv) Because Participant P retires during a period when the restriction in paragraph (d)(3) of this section applies to Plan A, only a portion of the benefit can be paid in the form of a single sum. P elects a single sum payment. Because a single sum payment is a prohibited payment, a determination must be made whether the payment can be paid under paragraph (d)(3)(i) of this section. In this case, because the portion of Participant P's benefit that is greater than a straight life annuity exceeds the lesser of 50% of the benefit otherwise payable, or the present value of the PBGC guaranteed benefit, it cannot be paid under paragraph (d)(3)(i) of this section. Accordingly, the maximum single sum that Participant P can receive is $637,200 (that is, the lesser of 50% of $1,416,000 or $637,200).

(v) Pursuant to paragraph (d)(3)(ii) of this section, the plan must offer P the option to bifurcate the benefit into restricted and unrestricted portions. The unrestricted portion is a monthly straight life annuity of $4,500, which can be paid in a single sum of $637,200. If P elects to receive the unrestricted portion of the benefit in the form of a single sum, then, with respect to the $5,500 restricted portion, the plan must permit P to elect any form of benefit that would otherwise be permitted with respect to the full $10,000 that is not a prohibited payment. Alternatively, the plan could permit P to elect to defer commencement of the restricted portion, subject to applicable qualification rules.

Example 2. (i) The facts are the same as in *Example 1.* In addition, Plan A provides an optional form of payment (subject to any benefit restrictions under section 436) that consists of a partial payment equal to the total return of employee contributions to the plan accumulated with interest, with an annuity payment for the remainder of the participant's benefit.

(ii) Participant Q is not married, and retires at age 65 during 2010, while Plan A is subject to the restriction under paragraph (d)(3) of this section. Participant Q has an accrued benefit equal to a straight life annuity of $3,000 per month. Under the optional form described in paragraph (i) of this *Example 2,* Q may elect a partial payment of $99,120 (representing the return of employee contributions accumulated with interest) plus a straight life annuity of $2,300 per month. The present value of Participant Q's accrued benefit, using actuarial assumptions under section 417(e), is $424,800. The present value of the PBGC guarantee payable at age 65 in the form of a straight life annuity is determined to be $637,200 for the purposes of this *Example 2.*

(iii) Under the bifurcation approach of paragraph (d)(3)(ii) of this section, Q can receive the partial single sum payment available under the terms of Plan A as long as the amount of the single sum does not exceed the unrestricted portion of the benefit under paragraph (d)(3)(ii)(B) of this section. The unrestricted portion of Q's benefit is the lesser of 50% of the benefit otherwise payable, or the present value of the PBGC guaranteed benefit. Accordingly, the maximum single sum that Q can receive is $212,400 (that is, the lesser of 50% of $424,800, or $637,200).

(iv) Because the present value of the portion of Q's benefit that is greater than the straight life annuity ($99,120) is less than the lesser of 50% of the present value of benefits (50% of $424,800) and $637,200 (100% of the PBGC guaranteed benefit), the optional form described in paragraph (i) of this *Example 2* is permitted to be paid under paragraph (d)(3)(i) of this section.

(4) *Exception for cessation of benefit accruals.* This paragraph (d) does not apply to a plan for a plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, provided for no benefit accruals with respect to any participants. If a plan that is described in this paragraph (d)(4) provides for benefit accruals during any time after September 1, 2005, this paragraph (d)(4) ceases to apply for the plan as of the date any benefits accrue under the plan.

(5) *Prohibited payment*—(i) *In general.* For purpose of this paragraph (d), the term *prohibited payment* means—

(A) Any payment for a month that is in excess of the monthly amount paid under a straight life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)) to a participant or beneficiary whose annuity starting date occurs during any period that a limitation under this paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any other payment that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(ii) *Annuity starting date.* Solely for purposes of applying the limitations on accelerated benefit payments under this paragraph (d), the term *annuity starting date* means, as applicable—

(A) The first day of the first period for which an amount is payable as an annuity as described in section 417(f)(2)(A)(i);

(B) In the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred (including the participant's election, the participant's severance from employment if the participant is below normal retirement age, and, if applicable, the participant's survival to the date as of which payment is made) which entitle the participant to such benefit as described in section 417(f)(2)(A)(ii);

(C) In the case of an amount payable on a retroactive annuity starting date, the benefit commencement date; and

(D) The date of any payment for the purchase of an irrevocable commitment from an insurer to pay benefits under plan.

(6) *Involuntary distributions under section 411(a)(11).* [Reserved].

(e) *Limitation on benefit accruals for plans with severe funding shortfalls*—(1) *In general.* A plan satisfies the requirements of section 436(e) and this paragraph (e) only if it provides that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan will cease as of the applicable section 436 measurement date. If a plan is required to cease benefit accruals under this paragraph (e), then the plan is not permitted to be amended in a manner that would increase the liabilities of the plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under paragraph (c)(3) of this section.

(2) *Exemption.* The prohibition on additional benefit accruals under a plan described in paragraph (e)(1) of this section ceases to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of the contribution described in paragraph (f)(2) of this section.

(f) *Methods to avoid benefit limitations*—(1) *In general.* This paragraph (f) sets forth rules relating to employer contributions and other methods to avoid the application of section 436 limitations under a plan for a plan year. In general, there are four methods a plan sponsor may utilize to avoid or terminate one or more of the benefit limitations under this section for a plan year. Two of these methods (where the plan sponsor elects to reduce the prefunding balance or funding standard carryover balance and where the plan sponsor makes additional contributions under section 430 for the prior plan year within the time period provided by section 430(j)(1) which are not added to the prefunding balance) involve increasing the amount of plan assets which are taken into account in determining the adjusted funding target attainment percentage. The other two methods (making a contribution that is specifically designated as a current year contribution to avoid application of a benefit limitation under paragraph (b), (c), or (e) of this section, and providing security under section 436(f)(1)) are described in paragraphs (f)(2) and (f)(3) of this section, respectively.

(2) *Current year contributions to avoid or terminate benefit limitations*—(i) *General rules*—(A) *Amount of contribution*—(1) *In general.* This paragraph (f)(2) sets forth rules regarding contributions to avoid the application of section 436 limitations under a plan for a plan year that apply to unpredictable contingent event benefits, plan amendments that increase liabilities for benefits, and benefit accruals.

(*2*) *Interest adjustment.* Any contribution made by a plan sponsor pursuant to this paragraph (f)(2) on a date other than the valuation date for the plan year must be adjusted with interest at the plan's effective interest rate under section 430(h)(2)(A) for the plan year. If the plan's effective interest rate for the plan year has not been determined at the time of the contribution, then this interest adjustment must be made using the highest of the three segment rates as applicable for the plan year under section 430(h)(2)(C). In such a case, if the effective interest rate for the year under section 430(h)(2)(A) is subsequently determined to be less than that highest rate, the excess is recharacterized as a section 430 contribution for the current plan year.

(B) *Prefunding balance or funding standard carryover balance may not be used.* No prefunding balance or funding standard carryover balance under section 430(f) may be used as a contribution described in this paragraph (f)(2). However, a plan sponsor is permitted to elect to reduce the funding standard carryover balance or the prefunding balance in order to increase the adjusted funding target attainment percentage for a plan year. See paragraph (a)(5) of this section for a rule mandating such a reduction in certain situations.

(ii) *Section 436 contributions separate from minimum required contributions*—(A) *In general.* The contributions described in this paragraph (f)(2) are contributions described in section 436(b)(2), (c)(2), and (e)(2), and are separate from any minimum required contributions under section 430. Thus, if a plan sponsor makes a contribution described in this paragraph (f)(2) for a plan year but does not make the minimum required contribution for the plan year, the plan will fail to satisfy the minimum funding requirements under section 430 for the plan year. In addition, a contribution described in this paragraph (f)(2) is disregarded in determining the prefunding balance under section 430(f)(6) and § 1.430(f)–1(b)(1)(i).

(B) *Designation requirement.* Any contribution made by a plan sponsor pursuant to this paragraph (f)(2) must be designated as such at the time the contribution is used to avoid or terminate the limitations under this paragraph (f)(2) and, except as specifically provided in paragraph (g) or (h) of this section, cannot subsequently be recharacterized with respect to any plan year as a contribution to satisfy a minimum required contribution obligation, or otherwise. The designation must be made in accordance with the rules and procedures that otherwise apply to elections under § 1.430(f)–1(f) with respect to funding balances.

(iii) *Contribution for unpredictable contingent event benefits.* In the case of a contribution to avoid the application of the limitation on benefits attributable to an unpredictable contingent event under section 436(b)—

(A) If the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the unpredictable contingent event benefits is less than 60 percent, then the amount of the contribution under section 436(b)(2) is equal to the amount of the increase in the funding target of the plan for the plan year if the benefits attributable to the unpredictable contingent event were included in the determination of the funding target.

(B) If the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the unpredictable contingent event benefits is 60 percent or more, then the amount of the contribution under section 436(b)(2) is the amount that would be sufficient to result in an adjusted funding target attainment percentage for the plan year of 60 percent if—

(*1*) The benefits attributable to the unpredictable contingent event were included in the determination of the funding target; and

(*2*) The contribution were included as part of the assets of the plan.

(iv) *Contribution for plan amendments increasing liability for benefits.* In the case of a contribution to avoid the application of the limitation on benefits attributable to a plan amendment under 436(c)—

(A) If the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the plan amendment is less than 80 percent, then the amount of the contribution under section 436(c)(2) is equal to the amount of the increase in the funding target of the plan for the plan year if the liabilities attributable to the amendment were included in the determination of the funding target.

(B) If the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the plan amendment is 80 percent or more, then the amount of the contribution under

section 436(c)(2) is the amount that would be sufficient to result in an adjusted funding target attainment percentage for the plan year of 80 percent if—

(*1*) The liabilities attributable to the plan amendment were included in the determination of the funding target; and

(*2*) The contribution were included as part of the assets of the plan.

(v) *Contribution required for continued benefit accruals.* In the case of a contribution to avoid the application of the limitation on accruals under section 436(e), the amount of the contribution under section 436(e)(2) is equal to the amount sufficient to result in an adjusted funding target attainment percentage for the plan year of 60 percent if the contribution were included as part of the assets of the plan.

(3) *Security to increase adjusted funding target attainment percentage*—(i) *In general.* For purposes of avoiding benefit limitations under section 436, a plan sponsor may provide security in the form described in paragraph (f)(3)(ii) of this section. In such a case, the adjusted funding target attainment percentage for the plan year is determined by treating as an asset of the plan any security provided by a plan sponsor by the valuation date for the plan year in a form meeting the requirements of paragraph (f)(3)(ii) of this section. However, this security is not taken into account as a plan asset for any other purpose, including section 430.

(ii) *Form of security.* The forms of security permitted under paragraph (f)(3)(i) of this section are limited to—

(A) A bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974, as amended; or

(B) Cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or an insurance company.

(iii) *Enforcement.* Any form of security provided under paragraph (f)(3)(i) of this section must provide—

(A) That it will be paid to the plan upon the earliest of—

(*1*) The plan termination date as defined in section 4048 of ERISA;

(*2*) If there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j)(1) or 430(j)(3); or

(*3*) If the plan's adjusted funding target attainment percentage is less than 60 percent (without regard to any security provided under this paragraph (f)(3)) for a consecutive period of 7 years, the valuation date for the last year in the 7-year period; and

(B) That the plan administrator must notify the surety, bank, or insurance company that issued or holds the security of any event described in paragraph (f)(3)(iii)(A) of this section within 10 days of its occurrence.

(iv) *Release of security.* The form of security is permitted to provide that it will be released (and any amounts thereunder will be refunded together with any interest accrued thereon) as provided in the agreement governing the escrow, but such release is not permitted until the plan's enrolled actuary has certified that the plan's adjusted funding target attainment percentage for a plan year is at least 90 percent (without regard to any security provided under this paragraph (f)(3)).

(v) *Contribution of security to plan.* Any amount of security provided under this paragraph (f)(3) that is subsequently turned over to the plan (whether pursuant to the enforcement mechanism of paragraph (f)(3)(iii) of this section or after its release under paragraph (f)(3)(iv) of this section) is treated as a contribution by the plan sponsor under section 430 when contributed and, if turned over pursuant to paragraph (f)(3)(iii) of this section, is not a contribution under paragraph (f)(2) of this section.

(4) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) Plan Z is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. Plan Z's sponsor is not in bankruptcy and did not purchase any annuities in 2009 or 2010. As of January 1, 2011, Plan Z does not have a funding standard carryover balance or a prefunding balance. As of that date, Plan Z has plan assets (and adjusted plan assets) of $2,000,000 and a funding target (and an adjusted funding target) of $2,550,000. On March 1, 2011, the enrolled actuary for the plan certifies that the AFTAP as of January 1, 2011, is 78.43%. The effective rate of interest for Plan Z for the 2011 plan year is 5.5%.

(ii) On May 1, 2011, the plan sponsor amends Plan Z to increase benefits. The enrolled actuary for the plan determines that the present value, as of January 1, 2011, of the increase in funding target due to this amendment is $400,000. Because the AFTAP prior to the plan amendment is less than 80%, Plan Z is subject to the restriction on plan amendments in paragraph (c) of this section, and the amendment cannot take effect unless the employer utilizes one of the methods described in paragraph (f) of this section to avoid benefit limitations.

(iii) In order for this amendment to be permitted to become effective, the plan sponsor makes a contribution described in paragraph (f)(2) of this section. Because the AFTAP prior to the amendment was less than 80%, the provisions of paragraph (f)(2)(iv)(A) of this section apply. The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is equal to the amount of the increase in funding target attributable to the amendment, or $400,000. Under the provisions of paragraph (f)(2)(iv)(A) of this section, this contribution is required even though, if the contribution were included as part of the plan assets and the liability attributable to the plan amendment were included in the funding target, the AFTAP would be 81.36% (because the adjusted plan assets would have been $2,400,000 and the adjusted funding target would have been $2,950,000 (that is, adjusted plan assets of $2,000,000 plus the contribution of $400,000 as of January 1, 2011; divided by the adjusted funding target of $2,550,000 increased to reflect the additional $400,000 in the funding target attributable to the plan amendment)).

(iv) However, because the contribution is not paid until May 1, 2011, the necessary contribution amount must be adjusted to reflect interest that would otherwise have accrued between the valuation date and the date of the contribution, at Plan Z's effective rate of interest for the 2011 plan year. The amount of the required contribution after adjustment is $407,203, determined as $400,000 increased for 4 months of compound interest at an effective annual interest rate of 5.5%.

(v) A contribution of $407,203 is made on May 1, 2011, and is designated as a contribution under paragraph (f)(2) of this section. Accordingly, the contribution is not applied toward minimum funding requirements under section 430, and is not eligible for inclusion in the prefunding balance under § 1.430(f)–1(b)(1). Since this contribution meets the requirements of paragraph (f)(2) of this section, the plan amendment can take effect.

Example 2. (i) The facts are the same as in *Example 1*, except that the plan is in at-risk status under section 430(i). The funding target determined under section 430(i) is $2,600,000, and the funding target determined without regard to section 430(i) is $2,550,000.

(ii) On May 1, 2011, the plan sponsor amends Plan Z to increase benefits. The plan's enrolled actuary determines that the present value as of January 1, 2011 of the increase in the funding target due to the amendment (taking into account the at-risk status of the plan) is $440,000. Because the AFTAP prior to the plan amendment is less than 80%, Plan Z is subject to the restriction on plan amendments in paragraph (c) of this section, and the amendment cannot take effect unless the employer utilizes one of the methods described in paragraph (f) of this section to avoid benefit limitations.

(iii) In order for this amendment to be permitted to become effective, the plan sponsor makes a contribution described in paragraph (f)(2) of this section. Because the AFTAP prior to the amendment was less than 80%, the provisions of paragraph (f)(2)(iv)(A)

of this section apply. The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is equal to the amount of the increase in funding target attributable to the amendment, or $440,000. Under the provisions of paragraph (f)(2)(iv)(A) of this section, this contribution is required even though, if the contribution were included as part of the plan assets and the liability attributable to the plan amendment were included in the funding target, the AFTAP would exceed 80%.

(iv) However, because the contribution is not paid until May 1, 2011, the necessary contribution amount must be adjusted to reflect interest that would otherwise have accrued between the valuation date and the date of the contribution, at Plan Z's effective rate of interest for the 2011 plan year. The amount of the required contribution after adjustment is $447,923, determined as $440,000 increased for 4 months of compound interest at an effective annual interest rate of 5.5%.

(v) A contribution of $447,923 is made on May 1, 2011, and is designated as a contribution under paragraph (f)(2) of this section. Accordingly, the contribution is not applied toward minimum funding requirements under section 430, and is not eligible for inclusion in the prefunding balance under § 1.430(f)–1(b)(1). Since this contribution meets the requirements of paragraph (f)(2) of this section, the plan amendment can take effect.

Example 3. (i) The facts are the same as in *Example 1*, except that the enrolled actuary for the plan does not issue the certification of the 2011 AFTAP until September 1, 2011. Prior to October 1, 2010, the enrolled actuary had certified the 2010 AFTAP to be 82%. The highest of the three segment rates applicable to the 2011 plan year under section 430(h)(2)(C) is 6%.

(ii) Because the enrolled actuary has not certified the actual AFTAP as of January 1, 2011, and the amendment is scheduled to take effect after April 1, 2011, the rules of paragraph (h)(2)(ii) of this section apply. Accordingly, the AFTAP for 2011 (prior to reflecting the effect of the amendment) is presumed to be 10 percentage points lower than the 2010 AFTAP, or 72%. Because this presumed AFTAP is less than 80%, the restriction on plan amendments in paragraph (c) of this section applies, and the plan amendment cannot take effect.

(iii) In order to allow the plan amendment to take effect, the plan sponsor decides to make a contribution under paragraph (f)(2) of this section on May 1, 2011. Because the presumed AFTAP was less than 80% prior to reflecting the plan amendment, the rules of section (f)(2)(iv)(A) apply, and the amount of the contribution under section 436(c)(2) is the amount of the increase in the funding target for the year if the plan amendment were included in the determination of the funding target. Accordingly, an additional contribution of $400,000 is required as of January 1, 2011, to avoid the restriction on plan amendments under paragraph (c) of this section.

(iv) However, since the contribution is not made until May 1, 2011, the amount of the required contribution must be adjusted to reflect interest that would otherwise have accrued between the valuation date and the date of the contribution. Since the effective interest rate has not yet been determined, the interest adjustment is based on the highest of the three segment rates applicable for the 2011 plan year under section 430(h)(2)(C), or 6%. The amount of the required contribution after adjustment is $407,845, determined as $400,000 increased for 4 months of compound interest at the highest segment interest rate for 2011, or 6%.

(v) Once the plan's effective interest rate has been determined, if that rate for the year is less than 6%, the amount of excess interest previously contributed is recharacterized as a section 430 contribution for the current plan year.

(g) *Rules of operation for periods prior to and after certification*—(1) *In general.* Section 436(h) and paragraph (h) of this section set forth a series of presumptions that apply before the enrolled actuary for a plan issues a certification of the plan's adjusted funding target attainment percentage for a plan year. This paragraph (g) sets forth rules for the application of limitations under sections 436(b), 436(c), 436(d), and 436(e) prior to and during the period those presumptions apply to a plan, and describes the interaction of those presumptions with plan operations after the plan's enrolled actuary has issued a certification of the plan's adjusted funding target attainment percentage for the plan year. Paragraph (g)(2) of this section sets forth rules that apply to periods during which a presumption under section 436(h) applies. Paragraph (g)(3) of this section sets forth rules that apply to periods during which no presumptions under section 436(h) apply but which are prior to the enrolled actuary's certification of the plan's adjusted funding target attainment percentage for the plan year. Paragraph (g)(4) of this section sets forth rules that apply after the enrolled actuary's certification of the plan's adjusted funding target attainment percentage for a plan year. Paragraph (g)(5) of this section sets forth additional rules that apply prior to the enrolled actuary's certification of the adjusted funding target attainment percentage for a plan year with respect to the limitations on unpredictable contingent event benefits and plan amendments that increase liabilities under paragraphs (b) and (c) of this section, respectively. Paragraph (g)(6) of this section sets forth rules for multiple unpredictable contingent events and amendments during a plan year. Paragraph (g)(7) of this section sets forth examples of the application of this paragraph (g).

(2) *Periods prior to certification during which a presumption applies—(i) Plan must follow presumptions.* A plan must provide that, for any period during which paragraph (h)(1), (2), or (3) of this section applies to the plan, the limitations applicable under paragraphs (b), (c), (d), and (e) of this section apply to the plan as if the actual adjusted funding target attainment percentage for the year were the presumed adjusted funding target attainment percentage determined under the rules of paragraph (h) of this section.

(ii) *Determination of amount of reduction in balances*—(A) *Valuation date adjustment.* During the period described in this paragraph (g)(2), the rules of paragraph (a)(5) of this section (relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance) must be applied based on the presumed percentage with respect to the limitations under paragraphs (b), (c), (d), and (e) of this section. In order to determine the amount of the reduction in those balances that would apply in such a situation, a presumed adjusted funding target must be established, which is then compared to the interim value of adjusted plan assets as of the valuation date for the current plan year. For this purpose, the interim value of adjusted plan assets is equal to the value of adjusted plan assets as of the valuation date, determined without regard to future contributions, future elections to add to the prefunding balance for the prior year, and future elections (including deemed elections under paragraph (a)(5) of this section) to reduce the prefunding and funding standard carryover balances for the current plan year, and the presumed adjusted funding target is equal to the interim value of adjusted plan assets for the plan year divided by the presumed adjusted funding target attainment percentage.

(B) *Change in presumed percentage in 4th month.* If the presumed adjusted funding target attainment percentage for the plan year changes during the year because of application of the presumption in paragraph (h)(2) of this section, the rules regarding the deemed election to reduce funding balances described in paragraph (a)(5) of this section must be reapplied based on the new presumed adjusted funding target attainment percentage. This will typically occur on the first day of the 4th month of a plan year, but could happen later if the enrolled actuary's certification of the adjusted funding target attainment percentage for a plan year occurs after the first day of the 4th month of the following plan year. In

order to perform this reapplication, a new adjusted funding target must be determined based on the new presumed adjusted funding target attainment percentage and must be compared to an updated interim value of adjusted plan assets. For this purpose, the new presumed adjusted funding target is redetermined based on the new presumed adjusted funding target attainment percentage, and is compared to the adjusted plan assets updated to take into account the plan sponsor's contributions made for the prior plan year and section 430(f) elections with respect to the plan's prefunding and funding standard carryover balances since the earlier determination of the interim plan assets. This reapplication of the deemed election may require an additional reduction in funding balances if the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of the limitation under paragraph (d) or (e) of this section is greater than the amount that was initially reduced. Prior reductions of funding balances continue to apply in accordance with the rules of paragraph (g)(4)(i)(C) of this section.

(iii) *Bankruptcy of plan sponsor.* Pursuant to section 436(d)(2), during any period in which the plan sponsor of a plan is a debtor in a case under title 11, United States Code, or any similar Federal or State law (as described in paragraph (d)(2) of this section), if the plan's enrolled actuary has not yet certified the plan's adjusted funding target attainment percentage for the plan year to be at least 100 percent, no prohibited payments within the meaning of paragraph (d)(5) of this section may be paid. Thus, the presumption rules of paragraph (h) of this section do not apply for purposes of section 436(d)(2) and this paragraph (g)(2)(iii).

(iv) *Application to unpredictable contingent events and plan amendments.* For purposes of applying the limitations under paragraphs (b) and (c) of this section during the period described in this paragraph (g)(2), the presumed adjusted funding target under paragraph (g)(2)(ii) of this section is adjusted to reflect the increase in the funding target that would be attributable to the unpredictable contingent event or the plan amendment if the unpredictable contingent event benefits or the increase in liability attributable to the plan amendment were taken into account. See paragraph (g)(5)(i) of this section for related rules regarding funding balances that apply in the case of unpredictable contingent event benefits or plan amendments increasing benefit liabilities.

(3) *Periods prior to certification during which no presumption applies*—(i) *Accelerated benefit payments and benefit accruals.* If no presumptions under section 436(h) apply to a plan during a period and the plan's enrolled actuary has not yet issued the certification of the plan's actual adjusted funding target attainment percentage for the plan year, the plan is not permitted to limit the payment of accelerated benefits under paragraph (d) of this section or the accrual of benefits under paragraph (e) of this section based on an expectation that those paragraphs will apply to the plan once an actuarial certification is issued. However, see paragraph (g)(2)(iii) of this section for a restriction on prohibited payments during any period in which the plan sponsor of a plan is a debtor in a case under title 11, United States Code, or any similar Federal or State law.

(ii) *Unpredictable contingent event benefits and plan amendments increasing benefit liability*—(A) *In general.* If no presumptions under section 436(h) apply to a plan during a period and the plan's enrolled actuary has not yet issued a certification of the plan's adjusted funding target attainment percentage for the plan year, the limitations on unpredictable contingent event benefits under paragraph (b) of this section or plan amendments increasing benefit liability under paragraph (c) of this section during that period must be applied following the rules of paragraph (g)(5) of this section, based on the preceding year's certified adjusted funding target attainment percentage. Thus, if after application of those rules the plan would be treated as having an adjusted funding target attainment percentage below the applicable threshold under paragraph (b) or (c) of this section (taking into account the increase in the funding target attributable to the unpredictable contingent event benefits or the increase in liability attributable to the plan amendment), the unpredictable contingent event benefits are not permitted to be paid, and the plan amendment is not permitted to go into effect, unless the contribution described in paragraph (g)(5)(ii) of this section is made.

(B) *Recharacterization of contributions to avoid benefit limitations.* If, pursuant to paragraph (g)(3)(ii)(A) of this section, the plan sponsor makes contributions described in paragraph (g)(5)(ii) of this section to avoid application of the applicable benefit limitations, then, after the certification of the adjusted funding target attainment percentage for the current plan year is issued by the plan's enrolled actuary, those contributions are recharacterized as employer contributions under section 430 for the current plan year to the extent they exceed the amount necessary to avoid application of the applicable limitation under paragraph (b) or (c) of this section based on the certified percentage.

(4) *Periods after certification of adjusted funding target attainment percentage*—(i) *Plan must follow certified percentage*—(A) *In general.* The rules of paragraphs (g)(2) and (g)(3) of this section no longer apply for a plan year on and after the date the enrolled actuary for the plan issues a certification of the adjusted funding target attainment percentage of the plan for the current plan year, provided that the certification is issued before the first day of the 10th month of the plan year. Thus, for example, the plan must provide that paragraph (d) of this section applies for distributions with annuity starting dates on and after the date of that certification using the certified adjusted funding target attainment percentage of the plan for the plan year. Similarly, the plan must provide that any prohibition on accruals under paragraph (e) of this section as a result of the enrolled actuary's certification that the adjusted funding target attainment percentage of the plan for the plan year is less than 60 percent is effective as of the date of the certification and that any prohibition on accruals ceases to be effective on the date the enrolled actuary issues a certification that the adjusted funding target attainment percentage of the plan for the plan year is at least 60 percent. In addition, in the case of a plan that has been issued a certification of the plan's adjusted funding target attainment percentage for a plan year by the plan's enrolled actuary, the plan sponsor must comply with the requirements of paragraphs (b) and (c) of this section for an unpredictable contingent event that occurs or a plan amendment that is effective on or after the date of the enrolled actuary's certification. Thus, the plan administrator must determine if the adjusted funding target attainment percentage is at or above the applicable threshold, taking into account the increase in the funding target that would be attributable to the unpredictable contingent event or plan amendment if the unpredictable contingent event benefits or the increase in liability attributable to the plan amendment were taken into account.

(B) *Application of rule for deemed election to reduce funding balances.* After the adjusted funding target

attainment percentage for a plan year is certified by the plan's enrolled actuary, the deemed election to reduce funding balances under paragraph (a)(5) of this section must be reapplied based on the actual funding target for the year (provided the certification is issued before the first day of the 10th month of the plan year). This reapplication of the deemed election may require an additional reduction in funding balances if the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of the limitations under paragraph (d) or (e) of this section is greater than the amount that was reduced under paragraph (g)(2) or (g)(3) of this section.

(C) *Prior reductions continue to apply.* If the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of the benefit limitation is less than the amount that was reduced under paragraph (g)(2) or (g)(3) of this section, then the prior reduction continues to apply. Similarly, if the amount of the reduction in funding balances that is necessary to reach the applicable threshold to avoid the application of the corresponding benefit limitation exceeds the amount of the funding balances, then the prior reduction continues to apply and no further reduction under paragraph (a)(5) of this section is provided.

(ii) *Applicability to prior periods*—(A) *In general.* Except as provided in paragraph (g)(4)(ii)(B) of this section, the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect the application of the limitation under paragraph (b) of this section with respect to unpredictable contingent events that occur during the periods to which paragraphs (g)(2) and (g)(3) of this section apply. Except as provided in paragraph (g)(4)(ii)(B) of this section, the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect the application of the limitation under paragraph (c) of this section to a plan amendment that increases liability for benefits where the amendment is first effective during the periods to which paragraphs (g)(2) and (g)(3) apply. The enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect the application of the limitation under paragraph (d) of this section for distributions with annuity starting dates before the certification. Similarly, the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect the application of the limitation under paragraph (e) of this section prior to the date of that certification. See paragraph (a)(4) of this section for rules relating to the period of time after benefits cease to be limited.

(B) *Special rule for unpredictable contingent event benefits and plan amendments that increase liability.* If a plan does not pay benefits attributable to an unpredictable contingent event or plan amendment because of the application of paragraph (g)(5)(ii) of this section, the plan must provide for benefits that were not previously paid (or accrued) if such benefits would be permitted under the rules of section 436 based on the certified actual adjusted funding target attainment percentage, taking into account the increase in the funding target that would be attributable to the unpredictable contingent event benefits or increase in liability due to the plan amendment.

(5) *Additional rules regarding limitations on unpredictable contingent event benefits and certain plan amendments based on presumed adjusted funding target prior to certification*—(i) *Reduction in funding balances*—(A) *Mandatory reduction for collectively bargained plans.* During the period described in paragraph (g)(2) or (g)(3) of this section, the rules of paragraph (a)(5) of this section (relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance) must be applied based on the presumed percentage. In order to determine the amount of the reduction in those balances that would apply to a collectively bargained plan during that period with respect to an unpredictable contingent event or a plan amendment that increases liability for benefits, the rules of paragraph (g)(2)(ii) of this section are applied, except that the presumed adjusted funding target is increased to take into account the benefits attributable to the unpredictable contingent event or the plan amendment. For this purpose, if no presumption applies under the rules of paragraph (h) of this section (for example, because the plan's actual adjusted funding target attainment percentage for the prior year was certified to be at least 80 percent), then that prior year's actual adjusted funding target attainment percentage is substituted for the presumed adjusted funding target attainment percentage for the plan year in determining the presumed adjusted funding target.

(B) *Optional reduction for plans that are not collectively bargained plans.* A plan sponsor of a plan that is not a collectively bargained plan (and, thus, is not required to reduce the funding standard account carryover balance and the prefunding balance under the rules of paragraph (a)(5) of this section) is permitted to reduce those balances in order to increase the interim value of adjusted plan assets (as defined in paragraph (g)(2)(ii)(A) of this section) that is compared to the presumed adjusted funding target determined under this paragraph (g)(5)(i).

(ii) *Plans funded below the threshold.* If, after application of paragraph (g)(5)(i) of this section, the ratio of the interim value of adjusted plan assets (as defined in paragraph (g)(2)(ii)(A) of this section) to the presumed adjusted funding target determined under that paragraph is less than the applicable threshold under section 436(b) or 436(c), as applicable, then the plan is not permitted to provide any benefits attributable to the unpredictable contingent event or plan amendment unless the plan sponsor makes a contribution that would allow payment of unpredictable contingent event benefits or would permit a plan amendment increasing benefit liabilities to go into effect under the rules of paragraph (b)(2) or (c)(2) of this section.

(iii) *Plans funded at or above the threshold.* If, after application of paragraph (g)(5)(i) of this section, the ratio of the interim value of adjusted plan assets (as defined in paragraph (g)(2)(ii)(A) of this section) to the presumed adjusted funding target is greater than or equal to the applicable threshold under section 436(b) or 436(c), as applicable, then the plan is not permitted to limit the payment of unpredictable contingent event benefits described in paragraph (b) of this section nor is the plan permitted to restrict a plan amendment increasing benefit liability described in paragraph (c) of this section from becoming effective based on an expectation that the limitations under paragraph (b) or (c) of this section will apply to the plan once an actuarial certification is received.

(6) *Application to multiple events and amendments.* For purposes of this paragraph (g), if a plan is providing benefits with respect to one or more unpredictable contingent events occurring within the plan year or amendments taking effect within the plan year, then paragraphs (b) and (c) of this section are applied with respect to a subsequent unpredictable contingent event or amendment by treating the increase in the funding target attributable to the subsequent event or amendment as if it included the increases in the funding target

attributable to all such earlier events or amendments.

(7) *Examples.* The following examples illustrate the application of this paragraph (g). Unless otherwise indicated, these examples are based on the following facts: each plan has a plan year that is the calendar year and a valuation date of January 1; the first effective plan year is 2008; the plan sponsor is not in bankruptcy; and no annuity purchases have been made from the plan. No plan is in at-risk status for the years discussed in the examples.

Example 1. (i) As of January 1, 2011, Plan A has assets of $3,300,000 and a prefunding balance of $300,000. Plan A has no funding standard carryover balance. Beginning on January 1, 2011, Plan A's AFTAP for 2011 is presumed to be 75%, under the rules of paragraph (h) of this section and based on the certified AFTAP for 2010.

(ii) Based on Plan A's presumed AFTAP of 75%, Plan A would be subject to the restriction on prohibited payments in paragraph (d)(3) of this section as of January 1, 2011. However, under the provisions of paragraph (a)(5) of this section, if the prefunding balance is large enough, Plan A's sponsor is deemed to elect to reduce the prefunding balance to the extent needed to avoid this restriction.

(iii) The amount needed to avoid the restriction in paragraph (d)(3) of this section is determined by comparing the presumed adjusted funding target for Plan A with the interim value of adjusted plan assets as of the valuation date. The interim value of plan assets for Plan A is $3,000,000 (that is, the asset value of $3,300,000 reduced by the prefunding balance of $300,000). The presumed adjusted funding target for Plan A is the interim value of the adjusted plan assets divided by the presumed AFTAP, or $4,000,000 (that is, $3,000,000 divided by 75%).

(iv) In order to avoid the restriction on prohibited payments in paragraph (d)(3) of this section, Plan A's presumed AFTAP must be increased to 80%. This requires an increase in Plan A's adjusted plan assets of $200,000 (that is, 80% of the presumed adjusted funding target of $4,000,000, minus the interim value of the adjusted plan assets of $3,000,000). Plan A's prefunding balance as of January 1, 2011, is reduced by $200,000 under the deemed election provisions of paragraph (a)(5) of this section. Accordingly, Plan A's prefunding balance is $100,000 (that is, $300,000 minus $200,000) and the interim value of adjusted plan assets is increased to $3,200,000 (that is, $3,300,000 minus the reduced prefunding balance of $100,000). Plan A must pay the full amount of the accelerated benefit distributions elected by participants with an annuity starting date of January 1, 2011, or later.

Example 2. (i) The facts are the same as in *Example 1.* As of April 1, 2011, the enrolled actuary for Plan A has not certified the 2011 AFTAP. Therefore, beginning April 1, 2011, Plan A's AFTAP is presumed to be 65%, 10 percentage points lower than the 2010 AFTAP, in accordance with paragraph (h)(2) of this section. Under the provisions of paragraph (g)(2)(ii)(B) of this section, the deemed election to reduce funding balances described in paragraph (a)(5) of this section must be reapplied based on the new presumed AFTAP.

(ii) In accordance with paragraph (g)(2)(ii)(B) of this section, a new adjusted funding target must be determined based on the new presumed AFTAP and must be compared to an updated interim value of adjusted plan assets. The new presumed AFTAP is equal to the interim value of adjusted plan assets as of the valuation date of $3,000,000, without reflecting the deemed election to reduce the prefunding balance that was made under paragraph (a)(5) of this section. The new presumed adjusted funding target is $3,000,000 divided by the presumed AFTAP of 65%, or $4,615,385.

(iii) In order to avoid the restriction on prohibited payments in paragraph (d)(3) of this section, Plan A's presumed AFTAP must be increased to 80%. This requires an additional increase in Plan A's adjusted plan assets of $492,308 (that is, 80% of the new presumed adjusted funding target of $4,615,385, minus the updated interim value of the adjusted plan assets of $3,200,000, reflecting the deemed reduction in Plan A's prefunding balance).

(iv) Plan A's remaining prefunding balance as of January 1, 2011, is only $100,000, which is not enough to avoid the restriction on prohibited payments under paragraph (d)(3) of this section. Accordingly, unless Plan A's sponsor utilizes one of the methods described in paragraph (f) of this section to avoid the restriction, Plan A is subject to the restriction on prohibited payments in paragraph (d)(3) of this section and cannot pay accelerated benefit distributions elected by participants with an annuity starting date of April 1, 2011, or later.

(v) Plan A's prefunding balance remains at $100,000 because, under paragraph (a)(5)(iii) of this section, the deemed reduction rules do not apply if the prefunding balance is not large enough to increase the adjusted value of plan assets enough to avoid the restriction. However, the earlier deemed reduction of $200,000 continues to apply because all elections (including deemed elections) to reduce a plan's funding standard carryover balance or prefunding balance are irrevocable and must be unconditional.

Example 3. (i) The facts are the same as in *Example 2.* On July 1, 2011, the enrolled actuary for Plan A calculates the actual adjusted funding target as $3,700,000 as of January 1, 2011. Therefore, the 2011 AFTAP would have been 81.08% without reducing the prefunding balance (that is, plan assets of $3,300,000 minus the prefunding balance of $300,000, divided by the adjusted funding target of $3,700,000), and Plan A would not have been subject to the restrictions under paragraph (d)(3) of this section.

(ii) However, paragraph (g)(4)(i)(C) of this section requires that any prior reductions in the prefunding or funding standard carryover balances continue to apply, and so Plan A's prefunding balance remains at the reduced amount of $100,000 as of January 1, 2011. The enrolled actuary certifies that the 2011 AFTAP is 86.49% (that is, plan assets of $3,300,000 reduced by the prefunding balance of $100,000, divided by the adjusted funding target of $3,700,000).

Example 4. (i) Plan B is a collectively bargained plan with assets of $2,500,000 and a prefunding balance of $150,000 as of January 1, 2011. Plan B has no funding standard carryover balance. Beginning on January 1, 2011, Plan B's AFTAP for 2011 is presumed to be 83% under the rules of paragraph (g)(3) of this section and based on the certified AFTAP for 2010.

(ii) On January 10, 2011, Plan B's sponsor amends the plan to increase benefits effective on February 1, 2011. The amendment would increase Plan B's funding target by $350,000. Under the rules of paragraph (g)(5) of this section, the presumed adjusted funding target is calculated, and then the presumed adjusted funding target is increased to take into account the benefits attributable to the plan amendment.

(iii) Plan B's interim value of adjusted plan assets as of the valuation date is $2,350,000 (that is, $2,500,000 minus the prefunding balance of $150,000). Prior to reflecting the amendment, Plan B's presumed adjusted funding target as of January 1, 2011, is $2,831,325, which is equal to the interim value of adjusted plan assets as of the valuation date of $2,350,000, divided by the presumed AFTAP of 83%. Increasing Plan B's presumed adjusted funding target by $350,000 to reflect the amendment results in a presumed adjusted funding target of $3,181,325 and a presumed AFTAP of 73.87% (that is, the interim value of adjusted plan assets as of the valuation date of $2,350,000 divided by the presumed adjusted funding target of $3,181,325).

(iv) Because Plan B's presumed AFTAP was over 80% prior to taking the amendment into account but less than 80% when the amendment is reflected, section 436(c) and paragraph (c) of this section prohibit the plan amendment from taking effect unless the adjusted plan assets are increased so that the presumed AFTAP (reflecting the increase due to the amendment) is increased to 80%. This would require an additional amount of $195,060 (that is, 80% of the presumed adjusted funding target of $3,181,325 less the interim value of adjusted plan assets of $2,350,000).

(v) Plan B's prefunding balance of $150,000 is not large enough for Plan B to avoid the restriction on plan amendments, and therefore the deemed election to reduce the prefunding balance under paragraph (a)(5) of this section does not apply and the amendment cannot take effect.

Example 5. (i) The facts are the same as in *Example 4*, except that Plan B's sponsor decides to make a contribution on February 1, 2011, to avoid the benefit limitation as provided in paragraph (f)(2) of this section. Pursuant to paragraph (f)(2)(i)(A)(*2*) of this section, Plan B's effective rate of interest for 2011 is treated as 5.25%.

(ii) The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is $195,060. However, because the contribution is not paid until February 1, 2011, the necessary contribution amount must be adjusted to

reflect interest that would otherwise have accrued between the valuation date and the date of the contribution, at Plan B's effective rate of interest for the 2011 plan year. The amount of the required contribution after adjustment is $195,894, determined as $195,060 increased for one month of compound interest at an effective annual interest rate of 5.25%.

(iii) As of April 1, 2011, the enrolled actuary for the plan has not certified the 2011 AFTAP. Therefore, beginning April 1, 2011, Plan A's presumed AFTAP is presumed to be 73%, 10 percentage points lower than the 2010 AFTAP, in accordance with paragraph (h)(2) of this section. However, paragraph (g)(2)(ii)(B) of this section does not require reapplication of the deemed election if necessary to avoid the application of benefit restrictions under paragraph (c) of this section. Therefore, since the effective date of the plan amendment occurred prior to April 1, 2011, no additional reduction in the prefunding balance is required and no additional contribution is required for the plan amendment to remain in effect.

(iv) On July 1, 2011, the enrolled actuary for the plan calculates the actual adjusted funding target, prior to taking the plan amendment into account, as $2,700,000 and certifies the actual AFTAP for 2011 (prior to taking the amendment into account) as 87.04% (that is, adjusted assets of $2,350,000 divided by the adjusted funding target of $2,700,000). Reflecting the $350,000 increase in funding target due to the plan amendment would increase the adjusted funding target to $3,050,000 and would decrease Plan B's AFTAP to 77.05%.

(v) Based on the certified AFTAP, the amount necessary to avoid the benefit restriction under paragraph (c) of this section is $90,000 (that is, 80% of the adjusted funding target reflecting the plan amendment (or $3,050,000), minus the adjusted value of plan assets of $2,350,000). This amount must be adjusted for interest between the valuation date and the date the contribution was made using the effective interest rate for Plan B. Therefore, the amount required on the payment date of February 1, 2011, is $90,385 (that is, $90,000 adjusted for compound interest for one month at Plan B's effective interest rate of 5.25% per year).

(vi) Under paragraph (g)(3)(ii)(B) of this section, the contribution made under paragraph (g)(5)(ii) of this section is recharacterized as an employer contribution under section 430 to the extent that it exceeds the amount necessary to avoid application of the restriction on plan amendments under paragraph (c) of this section. Therefore, $105,509 (that is, the $195,894 actual contribution paid on February 1, 2011, minus the $90,385 required contribution based on the actual certified AFTAP) is recharacterized as an employer contribution under section 430 for the 2011 plan year. As such, it may be applied toward the minimum required contribution for 2011, or the plan sponsor can elect to credit the contribution to Plan B's prefunding balance to the extent that the contributions for the 2011 plan year exceed the minimum required contribution.

Example 6. (i) The facts are the same as in *Example 5*, except that on July 1, 2011, the enrolled actuary for Plan B calculates the actual adjusted funding target (before reflecting the plan amendment) as $3,000,000 and certifies the actual AFTAP as 78.33% prior to reflecting the plan amendment (that is, adjusted plan assets of $2,350,000 divided by the actual adjusted funding target of $3,000,000). Based on the provisions of paragraph (c) of this section, because the AFTAP prior to reflecting the amendment is less than 80%, the contribution required to avoid the restriction on plan amendments would have been the amount equal to the increase in funding target due to the plan amendment, or $350,000.

(ii) However, according to paragraph (g)(4)(ii)(A) of this section, the enrolled actuary's certification of the 2011 AFTAP does not affect the application of the limitation under paragraph (c) of this section regardless of the extent to which the certified percentage varies from the presumed percentage, because the amendment to Plan B was effective prior to the date of the certification. Therefore, it is not necessary for Plan B's sponsor to contribute an additional amount in order for the plan amendment to remain in effect.

(h) *Presumed underfunding for purposes of benefit limitations*—(1) *Presumption of continued underfunding*—(i) *In general.* This paragraph (h)(1) applies to a plan for which a limitation under paragraph (b), (c), (d), or (e) of this section applied to the plan on the last day of the plan year preceding the current plan year. If this paragraph (h)(1) applies to a plan, the first day of the plan year is a section 436 measurement date and the presumed adjusted funding target attainment percentage for the plan is the percentage under paragraph (h)(1)(ii) or (iii) of this section, whichever applies to the plan, beginning on that first day until it is changed under this paragraph (h).

(ii) *Rule where preceding year certification issued during preceding year.* In any case in which the plan's enrolled actuary has issued a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year preceding the current year before the first day of the current year, the adjusted funding target attainment percentage of the plan for the current plan year is presumed to be equal to the preceding year's actual adjusted funding target attainment percentage until the plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage of the plan for the current plan year under paragraph (h)(4) of this section or until changed under paragraph (h)(2) or (h)(3) of this section.

(iii) *No certification for preceding year issued during preceding year*—(A) *Deemed percentage under 60 percent.* In any case in which the plan's enrolled actuary has not issued a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage of the plan for the plan year preceding the current year during that prior plan year, the adjusted funding target attainment percentage of the plan for the current plan year is presumed to be less than 60 percent until changed under paragraph (h)(1)(iii)(B) of this section or where the plan's enrolled actuary issues the certification of the adjusted funding target attainment percentage for the current year under paragraph (h)(4) of this section.

(B) *Enrolled actuary's certification in first 3 months of following year.* In any case in which the plan's enrolled actuary has issued the certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage of the plan for the plan year preceding the current year on or after the first day of the current year but before the first day of the 4th month of that year, the date of that prior year certification is a new section 436 measurement date for the plan year. In such a case, until it is changed by a certification of the current year's adjusted funding target attainment percentage under paragraph (h)(4) of this section or otherwise changed under paragraph (h)(2) or (h)(3) of this section, the presumed percentage for the current year beginning on the date of certification is equal to the certified percentage for the preceding year.

(2) *Presumption of underfunding after first day of 4th month for nearly underfunded plans*—(i) *In general.* This paragraph (h)(2) applies to a plan for which the actual adjusted funding target attainment percentage for the plan year preceding the current plan year was certified for that prior plan year to be at least 60 percent but less than 70 percent, or was certified for that prior plan year to be at least 80 percent but less than 90 percent, and where the enrolled actuary for the plan has not issued a certification of the adjusted funding target attainment percentage for the plan year by the first day of the 4th month of the plan year. If this paragraph (h)(2) applies to a plan, the presumed adjusted funding target attainment percentage for the plan is the percentage under paragraph (h)(2)(ii) or (iii) of this section, as applicable.

(ii) *Presumed adjusted funding target attainment percentage.* If this paragraph (h)(2) applies to a plan, and the date of the enrolled actuary's certification under paragraph (h)(4) of this section for the plan year preceding the current year occurred before the first day of the 4th month of the current plan year, then, commencing on the first day of the 4th

month of the current plan year and continuing until the earlier of the date the enrolled actuary issues a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year or the first day of the 10th month of the plan year as described in paragraph (h)(3) of this section—

(A) The adjusted funding target attainment percentage of the plan as of the valuation date for the plan year is presumed to be equal to 10 percentage points less than the actual adjusted funding target attainment percentage of the plan for the preceding plan year; and

(B) The first day of the 4th month of the plan year is treated as a section 436 measurement date.

(iii) *Certification for prior year.* If this paragraph (h)(2) applies to a plan, and the date of the enrolled actuary's certification under paragraph (h)(4) of this section of the actual adjusted funding target attainment percentage for the plan year preceding the current year occurs on or after the first day of the 4th month of the current plan year, then, commencing on the date of that prior year certification and continuing until the earlier of the date the enrolled actuary issues a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year or the first day of the 10th month of the plan year as described in paragraph (h)(3) of this section—

(A) The adjusted funding target attainment percentage of the plan as of the valuation date for the plan year is presumed to be equal to 10 percentage points less than the actual adjusted funding target attainment percentage of the plan for the preceding plan year; and

(B) The date of the prior year certification is treated as a section 436 measurement date.

(3) *Presumption of underfunding on and after first day of 10th month*—(i) *Section 436 measurement date.* In any case in which no certification of the specific adjusted funding target attainment percentage for the current plan year under paragraph (h)(4) of this section is made with respect to the plan before the first day of the 10th month of the plan year, then that first day is treated as a section 436 measurement date.

(ii) *Presumed percentage under 60 percent.* In any case in which no certification of the specific adjusted funding target attainment percentage for the current plan year under paragraph (h)(4) of this section is made with respect to the plan before the first day of the 10th month of the plan year, the plan's adjusted funding target attainment percentage is presumed to be less than 60 percent beginning on that date and continuing through the remainder of the plan year.

(4) *Certification of adjusted funding target attainment percentage*—(i) *Rules generally applicable to certifications*—(A) *In general.* The enrolled actuary's certification referred to in this section must be made in writing, must be provided to the plan administrator, and, except as provided in paragraph (h)(4)(ii) of this section, must certify the plan's adjusted funding target attainment percentage for the plan year (including setting forth the aggregate amount of annuity purchases taken into account under paragraph (j)(3)(ii) of this section).

(B) *Determination of plan assets.* For purposes of making any determination of the adjusted funding target attainment percentage under this section, the determination is not permitted to take into account assets that have not been contributed to the plan by the certification date. For example, the enrolled actuary's certification of the adjusted funding target attainment percentage for a plan year cannot take into account contributions that are expected to be made after the certification date. Notwithstanding the foregoing, for plan years beginning before January 1, 2009, the enrolled actuary's certification of the adjusted funding target attainment percentage is permitted to take into account employer contributions for the prior plan year that are reasonably expected to be made for that prior plan year but have not been contributed by the date of the enrolled actuary's certification. See paragraph (h)(4)(iii) of this section for rules relating to changes in the certified percentage.

(ii) *Special rules for certification within range*—(A) *In general.* Under this paragraph (h)(4)(ii), the plan's enrolled actuary is permitted to certify during the first nine months of a plan year that the plan's adjusted funding target attainment percentage for that plan year either is 60 percent or higher (but is less than 80 percent), is 80 percent or higher, or is 100 percent or higher. If the enrolled actuary has issued such a range certification for a plan year and the enrolled actuary subsequently issues a certification of the specific adjusted funding target attainment percentage for the plan before the first day of the 10th month of that plan year, the certification of the specific adjusted funding target attainment percentage is treated as a change in the applicable percentage to which paragraph (h)(4)(iii) of this section applies. If the enrolled actuary has issued a range certification for a plan year but no specific certification of the adjusted funding target attainment percentage of the plan for the plan year is issued by the plan's enrolled actuary before the first day of the 10th month of that plan year, then the rules of paragraph (h)(3) of this section apply and the change in the applicable percentage to under 60 percent on that date is treated as a change in the applicable percentage which is subject to the rules of paragraph (h)(4)(iii) of this section.

(B) *Effect of range certification*—(*1*) *Before certification of specific percentage.* If a plan's enrolled actuary issues a range certification pursuant to this paragraph (h)(4)(ii), then, for all purposes under this section (for example, applying the limitations of sections 436(b) and (c), making contributions described in sections 436(b)(2), 436(c)(2), and 436(e)(2), and the mandatory reduction of funding balances under paragraph (a)(5) of this section), the plan is treated as having a certified percentage at the smallest value within the applicable range.

(*2*) *On and after certification of specific percentage.* Once the certification of the specific adjusted funding target attainment percentage is issued by the plan's enrolled actuary (before the first day of the 10th month of the plan year), that certified percentage applies for all purposes of this section on and after the date of that certification. If the plan sponsor made section 436 contributions to avoid application of a benefit limitation during the period a range certification was in effect, those section 436 contributions will be recharacterized as employer contributions under section 430 to the extent the contributions exceed the amount necessary to avoid application of a limitation based on the specific adjusted funding target attainment percentage as certified by the plan's enrolled actuary before the first day of the 10th month of the plan year.

(iii) *Change of certified percentage*—(A) *Application of new percentage.* If the enrolled actuary for the plan provides a certification of the adjusted funding target attainment percentage of the plan for the plan year under this paragraph (h)(4) (including a range certification) and that certified percentage is superseded by a subsequent determination of the adjusted funding target attainment percentage for that plan year, that later percentage must be applied.

(B) *Determination of materiality*—(*1*) *In general.* With respect to the effect of that subsequent determination of the

adjusted funding target attainment percentage on the plan for the period during which the plan's operation was based on the prior percentage, a determination must be made whether the change in the applicable percentage is a material change or an immaterial change.

(*2*) *Definition of material change.* For this purpose, there is a material change in a plan's certified adjusted funding target attainment percentage if plan operations with respect to benefits that are addressed by section 436, taking into account any actual contributions and elections under section 430(f) made by the plan sponsor based on the prior certified percentage, would have been different based on the subsequent determination of the plan's adjusted funding target attainment percentage for the plan year. However, if the difference between the adjusted funding target attainment percentage for a plan year and the later revised determination of that percentage is the result of additional contributions for the preceding year that are made by the plan sponsor after the date of the enrolled actuary's certification or results from the plan sponsor's election to reduce the prefunding balance or funding standard carryover balance after the date of the certification, such change is not treated as a material change.

(*3*) *Definition of immaterial change.* An immaterial change is any change in an adjusted funding target attainment percentage for a plan year that is not a material change.

(C) *Effect of change in percentage*—(*1*) *Material change.* In the case of a material change where the plan was operated in accordance with the prior certification of the adjusted funding target attainment percentage for the plan year, the plan will not have satisfied the requirements of section 401(a)(29) and section 436. In the case of a material change where the plan was operated in accordance with the subsequent certification of the adjusted funding target attainment percentage during the period of time the prior certification applied, then the plan will not have been operated in accordance with its terms. In addition, in the case of a material change, the rules requiring application of a presumed adjusted funding target attainment percentage under paragraphs (h)(1) through (h)(3) of this section continue to apply from and after the date of the prior certification until the date of the subsequent certification.

(*2*) *Effect of immaterial change.* If the enrolled actuary for a plan provides a certification of the adjusted funding target attainment percentage of the plan for the plan year under this paragraph (h)(4) and that certified percentage is superseded by a subsequent determination of the adjusted funding target attainment percentage for that plan year that does not result in a material change under paragraph (h)(4)(iii)(B) of this section, the revised percentage does not change the inapplicability of the presumptions under paragraphs (h)(1), (2), and (3) of this section prior to the date of the later certification.

(5) *Application to plan with valuation date after first day of plan year.* [Reserved].

(6) *Examples of application of paragraphs (h)(1), (h)(2), and (h)(3) of this section.* The following examples illustrate the application of paragraphs (h)(1), (h)(2), and (h)(3) of this section. Unless otherwise indicated, the examples in this section are based on the information in this paragraph. Each plan is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The first effective plan year is 2008. The plan does not have a funding standard carryover balance or a carryforward balance as of any of the dates mentioned, and the plan sponsor does not elect to utilize any of the methods in paragraph (f) of this section to avoid applicable benefit restrictions. No range certification under paragraph (h)(4) of this section has been issued. The plan sponsor is not in bankruptcy.

Example 1. (i) On July 15, 2010, the adjusted funding target attainment percentage (''AFTAP'') for Plan T is certified to be 65%. Based on this AFTAP, Plan T is subject to the restriction on prohibited payments in paragraph (d)(3) of this section for the remainder of 2010.

(ii) Beginning January 1, 2011, Plan T's AFTAP for 2011 is presumed to be equal to the AFTAP for 2010, or 65%, under the provisions of paragraph (h)(1)(ii) of this section. Accordingly, the restriction on accelerated benefit distributions in paragraph (d)(3) of this section continues to apply.

(iii) On March 1, 2011, the enrolled actuary for the plan certifies that the actual AFTAP for 2011 is 80%. Therefore, beginning March 1, 2011, Plan T is no longer subject to the restriction under paragraph (d)(3) of this section, and so Plan T resumes paying the full amount of any accelerated benefit distributions elected by participants with an annuity starting date of March 1, 2011, or later.

Example 2. (i) The facts are the same as in *Example 1,* except that the enrolled actuary for the plan does not certify the AFTAP for 2011 until June 1, 2011. Accordingly, Plan T's AFTAP for 2011 is presumed to be equal to the AFTAP for 2010 of 65% from January 1, 2011, through March 31, 2011, and Plan T is subject to the restriction on accelerated benefit distributions under paragraph (d)(3) of this section during this period.

(ii) Beginning April 1, 2011, the provisions of paragraph (h)(2)(ii) of this section apply because the enrolled actuary for the plan still has not certified the actual AFTAP as of January 1, 2011. Under the provisions of paragraph (h)(2)(ii) of this section, the AFTAP for Plan T is presumed to be 10 percentage points lower, or 55%, beginning April 1, 2011. Accordingly, Plan T is now subject to the restriction in paragraph (d)(1) of this section, and so cannot pay any accelerated benefit distributions otherwise payable to plan participants who have annuity starting dates on or after April 1, 2011.

(iii) On June 1, 2011, the enrolled actuary for the plan certifies that the AFTAP for 2011 for Plan T is 66%. Accordingly, Plan T is no longer subject to the restriction under paragraph (d)(1) of this section, but it is subject to the restriction under paragraph (d)(3) of this section.

(iv) Since Plan T is no longer subject to the restriction on payment of accelerated benefit distributions under paragraph (d)(1) of this section, Plan T must resume paying the accelerated benefit distributions, as restricted under paragraph (d)(3) of this section, for participants who elect benefits in accelerated forms of payment and who have an annuity starting date of June 1, 2011, or later.

Example 3. (i) The facts are the same as in *Example 1*, except that the enrolled actuary for the plan does not certify the 2011 AFTAP until November 15, 2011. Beginning October 1, 2011, Plan T is conclusively presumed to have an AFTAP of less than 60%, in accordance with the provisions of paragraph (h)(3) of this section. Accordingly, Plan T is subject to the restriction in paragraph (d)(1) of this section, and cannot pay any accelerated benefit distributions to participants whose annuity starting date occurs on or after October 1, 2011.

(ii) On November 15, 2011, the enrolled actuary for the plan certifies that the AFTAP for 2011 is 72%. However, because the certification occurred after October 1, 2011, the certification does not constitute a new section 436 measurement date, and Plan T continues to be subject to the restrictions on accelerated benefit distributions and benefit accruals under paragraphs (d)(1) and (e) of this section.

(iii) Beginning January 1, 2012, the 2012 AFTAP for Plan T is presumed to be equal to the 2011 AFTAP of 72%. Because the presumed 2012 AFTAP is between 70% and 80% and, therefore, paragraph (h)(2) of this section (which provides for a 10 percentage point reduction in a plan's AFTAP in certain cases) will not apply, the presumed AFTAP will remain at 72% until the plan's enrolled actuary certifies the AFTAP for 2012 or until paragraph (h)(3) of this section applies on the first day of the 10th month of the plan year. Because the presumed AFTAP is 72%, Plan T is no longer subject to the restrictions on accelerated benefit distributions under paragraph (d)(1) of this section, and Plan T must resume paying accelerated benefit distributions, as restricted under paragraph (d)(3) of this section, that are elected by participants with annuity starting dates on or after January 1, 2012. Similarly, Plan T is no longer subject to the restriction on benefit

accruals under paragraph (e) of this section, and benefit accruals resume under Plan T beginning January 1, 2012, unless Plan T provides otherwise.

Example 4. (i) The facts are the same as in *Example 3*, except that the enrolled actuary for the plan does not issue a certification of the AFTAP for 2011 for Plan T until February 1, 2012.

(ii) Beginning on January 1, 2012, the presumptions in paragraph (h)(1)(iii) of this section apply for the 2012 plan year. Because the enrolled actuary for the plan has not certified the AFTAP for 2011, the presumed AFTAP as of October 1, 2011, continues to apply for the period beginning January 1, 2012. Therefore, the AFTAP as of January 1, 2012, is presumed to be less than 60%, and Plan T continues to be subject to the restriction on accelerated benefit distributions in paragraph (d)(1) and the restriction on benefit accruals under paragraph (e) of this section.

(iii) On February 1, 2012, the enrolled actuary for the plan certifies that the AFTAP for 2011 for Plan T is 65%. Because the enrolled actuary for the plan has not issued a certification of the AFTAP for 2012, the provisions of paragraph (h)(1)(iii)(B) of this section apply. Accordingly, the certification date for the 2011 AFTAP (February 1, 2012) is a section 436 measurement date and 65% is the presumed AFTAP for 2012 beginning on that date.

(iv) Because the presumed AFTAP is over 60% but less than 80%, the full restriction on accelerated benefit distributions under paragraph (d)(1) of this section no longer applies; however the partial restriction on accelerated benefit distributions under paragraph (d)(3) of this section applies beginning on February 1, 2012. Therefore, Plan T must pay a portion of accelerated benefit distributions elected by participants with annuity starting dates on or after February 1, 2012. Furthermore, based on the presumed AFTAP of 65%, the restriction on benefit accruals under paragraph (e) of this section no longer applies, and unless Plan T provides otherwise, benefit accruals will resume as of February 1, 2012.

Example 5. (i) The facts are the same as in *Example 3*, except that the enrolled actuary for the plan does not issue a certification of the actual AFTAP for Plan T as of January 1, 2011, until May 1, 2012.

(ii) Beginning on January 1, 2012, the presumptions in paragraph (h)(1)(iii) of this section apply for the 2012 plan year. Because the enrolled actuary for the plan has not certified the actual AFTAP as of January 1, 2011, the presumed AFTAP as of October 1, 2011, continues to apply for the period beginning January 1, 2012. Therefore, the AFTAP as of January 1, 2012, is presumed to be less than 60%, and Plan T continues to be subject to the restriction on accelerated benefit distributions in paragraph (d)(1) of this section and the restriction on benefit accruals under paragraph (e) of this section.

(iii) Since the enrolled actuary for the plan has not issued a certification of the actual AFTAP as of January 1, 2011, the rules of paragraph (h)(2)(iii) of this section apply beginning April 1, 2012, and the AFTAP is presumed to remain less than 60%. Plan T continues to be subject to the restriction on accelerated benefit distributions and benefit accruals under paragraphs (d)(1) and (e) of this section.

(iv) On May 1, 2012, the enrolled actuary for the plan certifies that the actual AFTAP for 2011 for Plan T is 65%. Because the enrolled actuary for the plan has not issued a certification of the actual AFTAP as of January 1, 2012, the provisions of paragraph (h)(2)(ii) of this section apply. Accordingly, on May 1, 2012, the 2012 AFTAP is presumed to be 10 percentage points less than the 2011 AFTAP, or 55%, so that the restrictions under paragraphs (d) and (e) of this section continue to apply.

Example 6. (i) The enrolled actuary for Plan V certifies the plan's AFTAP for 2010 to be 69%. Based on this AFTAP, Plan V is subject to the restriction in paragraph (d)(3) of this section, and can only pay a portion (generally 50%) of accelerated benefit distributions otherwise due to plan participants who commence benefits while the restriction is in effect. The enrolled actuary for the plan does not issue a certification of the AFTAP for 2011 until June 1, 2011.

(ii) Beginning January 1, 2011, Plan V's 2011 AFTAP is presumed to be equal to the 2010 AFTAP, or 69%, under the provisions of paragraph (h)(1)(ii) of this section. Accordingly, the restriction on accelerated benefit distributions in paragraph (d)(3) of this section continues to apply from January 1, 2011, through March 31, 2011, and Plan T may only pay a portion of accelerated benefit distributions otherwise due to participants who commence benefit payments during this period.

(iii) Beginning April 1, 2011, the provisions of paragraph (h)(2)(ii) of this section apply. Under those provisions, the AFTAP beginning April 1, 2011, is presumed to be 10 percentage points lower than the presumed 2011 AFTAP, or 59%. Because Plan V's presumed AFTAP for 2011 is less than 60%, the restriction on the payment of accelerated benefit distributions under paragraph (d)(1) of this section and the restriction on benefit accruals under paragraph (e) of this section apply. Accordingly, Plan V cannot pay any accelerated benefit distributions to participants with an annuity starting date on or after April 1, 2011, and benefit accruals cease as of March 31, 2011.

(iv) On June 1, 2011, Plan V's enrolled actuary certifies that the plan's AFTAP for 2011 is 71%. Therefore, the restrictions on accelerated benefit distributions and benefit accruals in paragraphs (d)(1) and (e) of this section no longer apply, but the partial restriction on benefit payments in paragraph (d)(3) of this section does apply. Accordingly, Plan V begins paying a portion of the accelerated benefit distributions elected by participants with an annuity starting date on or after June 1, 2011, and benefit accruals previously restricted under paragraph (e) of this section resume effective June 1, 2011, unless Plan V provides otherwise.

(v) Participants who were not able to elect an accelerated form of payment during the period from April 1, 2011, through May 31, 2011, would be able to elect a new starting date with a partial distribution of accelerated benefits effective June 1, 2011, if Plan V contained a preexisting provision permitting such an election after the restriction in paragraph (d)(1) of this section no longer applies. This is permitted because, under paragraph (a)(4)(ii)(A) of this section, a preexisting provision of this type is not considered a plan amendment and is therefore not subject to the plan amendment restriction in paragraph (c) of this section even though Plan V's AFTAP for 2011 is less than 80%.

(vi) Benefit accruals for the period beginning April 1, 2011, through May 31, 2011, would be automatically restored if Plan V contained a preexisting provision to retroactively restore benefit accruals restricted under paragraph (e) of this section after the restriction no longer applies. This is permitted because under paragraph (a)(4)(ii)(A) of this section, a preexisting provision of this type is not considered to be a plan amendment and is therefore not subject to the plan amendment restriction in paragraph (c) of this section even though Plan V's AFTAP for 2011 is less than 80%, because the period of the restriction did not exceed 12 months.

(7) *Examples of application of paragraph (h)(4) of this section.* The following examples illustrate the application of paragraph (h)(4) of this section:

Example 1. (i) Plan Y is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. Plan Y does not have a funding standard carryover balance or a prefunding balance. Plan Y's sponsor is not in bankruptcy. In June of 2010, the actual AFTAP for 2010 for Plan Y is certified as 65%. On the last day of the 2010 plan year, Plan Y is subject to the restrictions in paragraph (d)(3) of this section.

(ii) The enrolled actuary for the plan issues a range certification on March 21, 2011, certifying that the AFTAP for 2011 is at least 60% and less than 80%. Because the certification was issued before the first day of the 4th month of the plan year, the 10 percentage point reduction in the presumed AFTAP under paragraph (h)(2) of this section does not apply. In addition, because the enrolled actuary for the plan has certified that the AFTAP is within this range, Plan Y is not subject to the full restriction on accelerated benefit payments in paragraph (d)(1) of this section or the restriction on benefit accruals under paragraph (e) of this section.

(iii) On August 1, 2011, the enrolled actuary for the plan certifies that the actual AFTAP as of January 1, 2011, is 75.86%. This AFTAP falls within the previously certified range. Thus, the change is immaterial under paragraph (h)(4)(iii) of this section and the new certification does not change the applicability or inapplicability of the restrictions in this section.

Example 2. (i) The facts are the same as in *Example 1*, except that the plan sponsor makes an additional contribution for the 2010 plan year on September 1, 2011, that is not added to the prefunding balance.

Reflecting this contribution, the enrolled actuary for the plan issues a revised certification stating that the AFTAP for 2011 is 81%, and Plan Y is no longer subject to the restriction on accelerated benefit payments under paragraph (d)(3) of this section on that date.

(ii) Although the revised certification changes the applicability of the restriction under paragraph (d)(3) of this section, the change is not a material change under paragraph (h)(4)(iii)(B)(*2*) of this section because it changed only because of additional contributions for the preceding year made by the plan sponsor after the date of the enrolled actuary's initial certification.

(i) [Reserved].

(j) *Definitions.* For purposes of this section—

(1) *Funding target.* For purposes of section 436, the *funding target* means the funding target under section 430(d) or 430(i), as applicable to the plan for the plan year.

(2) *Funding target attainment percentage*—(i) *In general.* For purposes of section 436, the *funding target attainment percentage* for any plan year is the fraction (expressed as a percentage), the numerator of which is the value of net plan assets for the plan year, and the denominator of which is the plan's funding target for the plan year (but determined without regard to the at-risk rules under section 430(i) even in the case of a plan that is in at-risk status). For this purpose, pursuant to section 430(f)(4), the value of net plan assets for the plan year is generally determined by subtracting the plan's funding standard carryover balance and prefunding balance (if any) for the plan year from the value of plan assets. A plan with a value of net plan assets for a plan year of zero is treated as having a funding target attainment percentage of zero, regardless of the amount of the plan's funding target.

(ii) *Application to plans that are fully funded without regard to subtraction of funding balances from plan assets*—(A) *In general.* If the funding target attainment percentage for a plan year, determined without regard to the section 430(f)(4) subtraction of the funding standard carryover balance and the prefunding balance from the value of plan assets, would be 100 percent or more, then, solely for purposes of section 436 and this section (but not section 430(d)), the value of net plan assets used in the determination of the funding target attainment percentage described in this paragraph (j)(2) (and the adjusted funding target attainment percentage described in paragraph (j)(3) of this section) is determined without regard to any subtraction of funding balances under section 430(f)(4).

(B) *Transition rule.* Paragraph (j)(2)(ii)(A) of this section is applied to plan years beginning after 2007 and before 2011 by substituting for ''100 percent'' the applicable percentage determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2008	92
2009	94
2010	96

(C) *Limitation.* Paragraph (j)(2)(ii)(B) of this section does not apply with respect to any plan year after 2008 unless the funding target attainment percentage (determined without regard to the section 430(f)(4) subtraction of the funding standard carryover balance and the prefunding balance from the value of plan assets) of the plan for each preceding plan year (after 2007) was not less than the applicable percentage with respect to such preceding plan year determined under paragraph (j)(2)(ii)(B) of this section.

(iii) *Special rules for first effective plan year*—(A) *In general.* In the case of the plan's first effective plan year, the funding target attainment percentage under section 436 for the plan's pre-effective plan year is determined as the fraction (expressed as a percentage), the numerator of which is the net plan assets determined under paragraph (j)(2)(iii)(B) of this section, and the denominator of which is the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the plan's pre-effective plan year.

(B) *General determination of value of net plan assets*—(*1*) *In general.* The value of net plan assets for purposes of this paragraph (j)(2)(iii) is determined under section 412(c)(2) as in effect for the plan's pre-effective plan year, except that the value of plan assets prior to subtracting the plan's funding standard account credit balance described in paragraph (j)(2)(iii)(B)(*2*) of this section can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year.

(*2*) *Subtraction of credit balance.* If a plan has a funding standard account credit balance as of the valuation date for the plan's pre-effective plan year, that balance is subtracted from the net asset value described in paragraph (j)(2)(iii)(B)(*1*) of this section as of that valuation date. However, the subtraction does not apply if the value of plan assets determined in paragraph (j)(2)(iii)(B)(*1*) of this section is greater than or equal to 90 percent of the plan's current liability as of the valuation date for the plan determined under paragraph (j)(2)(iii)(A) of this section.

(*3*) *Effect of funding standard carryover balance reduction for first effective plan year.* Notwithstanding paragraph (j)(2)(iii)(B)(*2*) of this section, if, for the first effective plan year, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with § 1.430(f)–1(e), then the present value (determined as of the valuation date for the pre-effective plan year using the valuation interest rate for that pre-effective plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (j)(2)(iii)(B)(*2*) of this section.

(3) *Adjusted funding target attainment percentage*—(i) *In general.* The *adjusted funding target attainment percentage* for any plan year is the fraction (expressed as a percentage), the numerator of which is the adjusted plan assets described in paragraph (j)(3)(ii) of this section and the denominator of which is the adjusted funding target described in paragraph (j)(3)(iii) of this section.

(ii) *Adjusted plan assets.* The adjusted plan assets equals the net plan assets (determined under paragraph (j)(2) of this section), increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(iii) *Adjusted funding target*—(A) *In general.* The adjusted funding target equals the funding target for the plan year (determined in accordance with paragraph (j)(1) of this section but without regard to the at-risk rules under section 430(i)), increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(B) *Special rule for first effective plan year.* In the case of the plan's first effective plan year, for purposes of determining the adjusted funding target attainment percentage for the pre-effective plan year, the adjusted funding target is equal to the current liability determined pursuant to section 412(l)(7) as of the plan's valuation date for the pre-effective plan year, increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as

defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(iv) *Special rule where current liability not certified for pre-effective plan year.* In any case in which the plan's enrolled actuary has not issued a certification under paragraph (h)(4)(i) of this section of the adjusted funding target attainment percentage of the plan for the pre-effective plan year, the adjusted funding target attainment percentage of the plan for the first effective plan year is presumed to be less than 60 percent until the adjusted funding target attainment percentage of the plan for the pre-effective plan year has been certified. The preceding sentence applies for purposes of paragraphs (b) and (c) of this section at the beginning of the first effective plan year and applies for purposes of paragraphs (d) and (e) of this section as of the first day of the 4th month of the first effective plan year. See paragraph (h) of this section for rules that apply after the adjusted funding target percentage for the plan has been certified for either the pre-effective plan year or the first effective plan year.

(4) *Section 436 measurement date.* The section 436 measurement date is the date that is used to stop or start the application of the limitations of sections 436(d) and 436(e), and is also used for calculations with respect to applying the limitations of paragraphs (b) and (c) of this section. See paragraph (h) of this section regarding section 436 measurement dates that result from application of the presumptions under that paragraph (h) of this section.

(5) *Examples.* The following examples illustrate the application of this paragraph (j):

Example 1. (i) Plan S is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The first effective plan year is 2008.

(ii) As of January 1, 2008, Plan S has a value of plan assets (equal to the market value of assets) of $2,100,000 and a funding standard carryover balance of $200,000. During 2006, assets from Plan S were used to purchase a total of $100,000 in annuities for employees other than highly compensated employees. No annuities were purchased during 2007. On May 1, 2008, the enrolled actuary for the plan determines that the funding target as of January 1, 2008, is $2,500,000.

(iii) The adjusted value of assets for Plan S as of January 1, 2008, is $2,000,000 (that is, plan assets of $2,100,000 plus annuity purchases of $100,000 minus the funding standard carryover balance of $200,000). The adjusted funding target is $2,600,000 (that is, the funding target of $2,500,000, increased by the annuity purchases of $100,000).

(iv) Based on the above adjusted plan assets and adjusted funding target, the AFTAP as of January 1, 2008, would be 76.92%. Since the AFTAP is less than 80% but is at least 60%, Plan S is subject to the restrictions in paragraph (d)(3) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except that it is reasonable to expect that the plan sponsor will make a contribution of $80,000 to Plan S for the 2007 plan year by September 15, 2008. This amount is in excess of the minimum required contribution for 2007. The plan sponsor elects to reduce the funding standard carryover balance by $80,000.

(ii) Because it is reasonable to expect that the $80,000 will be contributed by the plan sponsor, that amount is taken into account when the enrolled actuary certifies the 2008 AFTAP under the special rule in paragraph (h)(4)(i)(B) of this section for plan years beginning before 2009. Accordingly, the enrolled actuary for the plan certifies the 2008 AFTAP as 80% (that is, adjusted plan assets of $2,080,000, reflecting the $80,000 in contributions receivable, divided by the adjusted funding target of $2,600,000).

(iii) The ability to take contributions into account before they are actually paid to the plan is available only for plan years beginning before 2009. Furthermore, if the employer does not actually make the contribution and the difference between the incorrect certification and the corrected AFTAP constitutes a material change, the plan will have violated section 401(a)(29) or will not have been operated in accordance with its terms.

Example 3. (i) Plan R is a defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The first effective plan year for Plan R is 2008. The valuation interest rate for the 2007 plan year for Plan R is 7%. The fair market value of assets of Plan R as of January 1, 2007, is $1,000,000. The actuarial value of assets of Plan R as of January 1, 2007, is $1,200,000. The current liability of Plan R as of January 1, 2007, is $1,500,000. The funding standard account credit balance as of January 1, 2007, is $80,000. The funding standard carryover balance of Plan R is $50,000 as of the beginning of the 2008 plan year. The sponsor of Plan R, Sponsor T, elects in 2008 to reduce the funding standard carryover balance in accordance with § 1.430(f)–1 by $45,000.

(ii) Pursuant to paragraph (j)(2)(iii)(B)(*1*) of this section, the asset value used to determine the funding target attainment percentage (FTAP) for the 2007 plan year is limited to 110% of the fair market value of assets on January 1, 2007, or $1,100,000 (110% of $1,000,000).

(iii) Pursuant to paragraph (j)(2)(iii)(B)(*2*) of this section, the funding standard account credit balance as of January 1, 2007, is subtracted from the asset value used to determine the FTAP for the 2007 plan year. However, pursuant to paragraph (j)(2)(iii)(B)(*3*) of this section, the present value of the amount by which Sponsor T elected to reduce the funding standard carryover balance in 2008 is not subtracted.

(iv) The present value, determined at an interest rate of 7%, of the $45,000 reduction in the funding standard account carryover balance elected by Sponsor T in 2008 is $42,056. Thus, $42,056 is not subtracted from the 2007 plan year asset value. Accordingly, the funding standard account credit balance that is subtracted from the 2007 plan year asset value is $37,944 (that is, $80,000 less $42,056).

(v) Thus, the asset value that is used to determine the FTAP for the 2007 plan year is $1,100,000 less $37,944, or $1,062,056. Accordingly, for purposes of this section, the FTAP for the 2007 plan year for Plan R is 70.8% (that is, $1,062,056 divided by $1,500,000).

(k) *Effective/applicability dates*—(1) *In general.* In general, this section applies to plan years beginning on or after January 1, 2008.

(2) *Plans with delayed effective/applicability date.* In the case of a plan for which the effective date of section 436 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, this section applies to plan years beginning on or after the effective date of section 436 with respect to the plan.

(3) *Collective bargaining exception*—(i) *In general.* In the case of a collectively bargained plan that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before January 1, 2008, this section does not apply to plan years beginning before the earlier of—

(A) The date described in paragraph (k)(3)(ii) of this section; or

(B) January 1, 2010.

(ii) *Termination of collective bargaining agreement.* The date described in this paragraph (k)(3)(ii) is the later of—

(A) The date on which the last collective bargaining agreement relating to the plan terminates (determined in accordance with paragraph (k)(3)(iii) of this section and without regard to any extension thereof agreed to after August 17, 2006); or

(B) The first day of the first plan year to which this section would (but for this paragraph (k)(3)) apply.

(iii) *Treatment of certain plan amendments.* Any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by section 436 is not treated as a termination of the collective bargaining agreement.

(iv) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan with respect to which a collective bargaining agreement applies to some, but not all, of the plan

participants, the plan is considered a collectively bargained plan for purposes of this paragraph (k)(3) if it is considered a collectively bargained plan under the rules of paragraph (a)(5)(ii)(B) of this section.

(4) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which this section applies under paragraph (k)(1), (k)(2), or (k)(3) of this section.

(5) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before the first effective date applicable under paragraph (k)(1), (k)(2), or (k)(3) of this section. Thus, except for plans with a delayed effective date under paragraph (k)(2) or (k)(3) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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Part VI

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32 CFR Part 232

Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

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Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (the Department or DoD) is amending 32 CFR by adding new regulations to implement the consumer protections provisions of Public Law 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007, section 670, ''Limitations on Terms of Consumer Credit Extended to Service Members and Dependents'' (October 17, 2006). Section 670 requires the Secretary of Defense to prescribe regulations to carry out the new section. The final rule regulates the terms of certain credit extensions to active duty service members and their dependents.

EFFECTIVE DATE: October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. George Schaefer, (703) 588–0876.

SUPPLEMENTARY INFORMATION:

I. Background

Today's joint force combat operations require highly trained, experienced and motivated troops. We are fortunate that today's All Volunteer Force is comprised of individuals who fit the stringent requirements needed for success on the battlefield. The military has seen many changes since it became an All Volunteer Force in 1973. The technological advances over the ensuing 34 years have made remarkable transformations to the capabilities of the Armed Forces.

These advances would not have been as easily attained if it were not for the All Volunteer Force. The members of this force have higher levels of aptitude, stay in the military longer, and as a consequence, perform better than their conscript predecessors. During the Vietnam era draft, 90 percent of conscripts quit after their initial two-year hitch, whereas retention of volunteers is five-times better today—about half remain after their initial (four-year) military service obligation. Said another way, two thirds of the military was serving in its first two years of service prior to 1973, where as today, the number is about one-fourth.

Today's Service members are still younger than the population as a whole, with 46 percent 25 years old or less. Thirty-eight percent of Service members 25 years old or less are married and 21 percent of them have children. This is compared with approximately 13 percent of their contemporaries in the U.S. population 18 through 24 who are married (2000 Census). The majority of recruits come to the military from high school, with little financial literacy education.

The initial indoctrination provided to Service members is critical, providing basic requirements for their professional and personal responsibilities and their successful adjustment to military life. Part of this training is in personal finance, which is an integral part of their personal, and often, professional success. The Department of Defense (the Department) continues to provide them messages to save, invest, and manage their money wisely throughout their career.

Service members and their families are experiencing the sixth year of the Global War on Terror. The Department views the support provided to military families as essential to sustaining force readiness and military capability. From this perspective, it is not sufficient for the Department to train Service members on how best to use their financial resources. Financial protections are an important part of fulfilling the Department's compact with Service members and their families.

Social Compact

The Department believes that assisting Service members with their family needs is essential to maintaining a stable, motivated All Volunteer Force. As part of the President's February 2001 call to improve the quality of life for Service members and their families, the Department developed a social compact reflecting the Department's commitment to caring for their needs as a result of their commitment to serving the Nation. The social compact involved a bottom-up review of the quality-of-life support provided by the Department, which articulated the linkage between quality-of-life programs as a human capital management tool and the strategic goal of the Department—military readiness.

The social compact is manifested in the programs the Department provides to support the quality of life of Service members and their families. This social compact includes personal finances as an integral part of their quality of life. The Department equates financial readiness with mission readiness. When asked in 2005 on a blind survey to rate the stressors in their lives, Service members (as a group) rated finances as a more significant stressor than deployments, health concerns, life events, and personal relationships. They only rated work and career concerns as a higher stressor in their lives. As part of the social compact for financial readiness, the Department established a strategic plan to:

- Reduce the stressors related to financial problems. The stress associated with out-of-control debt impacts the performance of Service members and has a major negative impact on family quality of life.
- Increase savings. Establishing personal and family goals, helps motivate Service members to control their finances and live within their means.
- Decrease dependence on unsecured debt. This reduces the stressors and vulnerabilities associated with living from paycheck to paycheck.
- Decrease the prevalence of predatory practices. This provides protection from financial practices that seek to deceive Service members or take advantage of them at a time of vulnerability.

The Department has taken action to obtain these outcomes by providing financial awareness, education, and counseling programs; by advocating the marketplace deliver beneficial products and services; and by advocating for the protection for Service members and their families from harmful products and practices.

Financial Education

The Military Services are expected to provide instruction and information to fulfill the needs of Service members and their families. To this end, the Department established a policy in November 2004: DoD Instruction 1342.27, *Personal Financial Management Programs for Service Members.*

As outlined in the Government Accountability Office (GAO) Report 05–348, the Military Services have their own programs for training first-term Service members on the basics of personal finance. These programs vary in terms of venue and duration; however, all Military Service programs must cover the same core topics to the level of competency necessary for first-term Service members to apply basic financial principles to everyday life situations.

The Department has tracked the ability of Service members to pay their bills on time as a reflection of their competency and ability to apply basic financial principles. Since 2002, self-

reported assessments through survey data have shown Service members are doing a better job keeping up with their monthly payments.

To assist the Military Services in delivering financial messages, the Department established the Financial Readiness Campaign in May 2003, which has gathered the support of 26 nonprofit organizations and Federal agencies. In the past three years, Service members have benefited from the materials and assistance from over 20 active partnerships. These partnerships are on-going and have been developed to allow the Military Services to choose which partner programs can best supplement the education, awareness, and counseling services they provide. The materials and services supplement but do not take the place of the programs offered by the Military Services.

Aspects of predatory lending practices are covered as topics in initial financial education training and in refresher courses offered at the military installations and aboard ships. The Military Services annually provide over 10,000 classes and train approximately 24 percent of the force, as well as nearly 20,000 family members. These classes are primarily conducted on military installations located in the United States.

In addition to these classes, Financial Readiness Campaign partner organizations conduct over a thousand classes informing over 60,000 Service members and family members per year. These classes are primarily provided by the staff of banks and credit unions located on military installations (military banks and defense credit unions). These institutions provide these classes as part of their responsibilities outlined in the DoD Financial Management Regulation. Other organizations involved include local Credit Counseling Agencies, State financial regulatory agencies, the InCharge Institute, and the NASD Foundation.

The Military Service financial educators, along with partner organizations, also distributed over 200,000 brochures and pamphlets, with the Military Services and the Federal Trade Commission primarily providing these products. In addition, *Military Money Magazine* has run several articles, to include two cover articles on predatory lending. The magazine is free and is distributed through military commissaries, family support centers and other service agencies on the installation, as well as to residents on installation and to addresses off the installation upon request. The distribution is approximately 250,000 per quarter.

Lending Practices Considered Predatory

As identified in GAO Report 05–349, *DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized,* April 2005, the review of practices that are considered predatory has not benefited from a consistent definition that has been universally applied. However, sources studying the issue of predatory lending have focused on similar characteristics. GAO Report 04–280, *Federal and State Agencies Face Challenges in Combating Predatory Lending,* January 2004, said the following:

> While there is no uniformly accepted definition of predatory lending, a number of practices are widely acknowledged to be predatory. These include, among other things, charging excessive fees and interest rates, lending without regard to borrowers' ability to repay, refinancing borrowers' loans repeatedly over a short period of time without any economic gain for the borrower, and committing outright fraud or deception.

This definition has been reiterated in the FDIC Office of the Inspector General Audit Report 06–0111, June 2006, which stated:

> Characteristics associated with predatory lending include, but are not limited to, (1) Abusive collection actions, (2) balloon payments with unrealistic repayment terms, (3) equity-stripping associated with repeat financing and excessive fees, and (4) excessive interest rates that may involve steering a borrower to a higher-cost loan.

These same characteristics were also identified in the DoD Report to Congress on *Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,* August 9, 2006:

> Predatory lending in the small loan market is generally considered to include one or more of the following characteristics: High interest rates and fees; little or no responsible underwriting; loan flipping or repeat renewals that ensure profit without significantly paying down principal; loan packing with high cost ancillary products whose cost is not included in computing interest rates; a loan structure or terms that transform these loans into the equivalent of highly secured transactions; fraud or deception; waiver of meaningful legal redress; or operation outside of state usury or small loan protection laws or regulations. The effect of the practices include whether the loan terms or practices listed above strip earnings or savings from the borrower; place the borrower's key assets at undue risk; do not help the borrower resolve their financial shortfall; trap the borrower in a cycle of debt; and leave the borrower in worse financial shape than when they initially contacted the lender.

While the Report to Congress provides a more expansive definition, there are several commonalities among the definitions listed above:

- Lending without regard of the borrowers ability to repay;
- Excessive fees and excessive interest rates;
- Balloon payments with unrealistic repayment terms;
- Wealth stripping associated with repeat rollovers/financing; and
- Fraud and deception.

The Department started collecting information on high cost lending in 2004 as part of the Defense Manpower and Data Center annual surveys of active duty Service members. The survey requested input on payday loans, rent-to-own, refund anticipation loans and vehicle title loans. GAO Report 05–359 focused on these four practices and obtained feedback from command leaders, Personal Financial Management (PFM) program managers, command financial counselors, legal assistance attorneys, senior noncommissioned officers (pay grades E8 to E9), chaplains, and staff from the military relief/aid societies. Data from these and others indicate that providers of such loans may be targeting Service members.

The Report to Congress reviewed five products (payday loans, vehicle-title loans, rent-to-own, refund anticipation loans, and military installment loans) identified by installation-level financial counselors (employed as PFM program managers and employed by the Military Aid Societies) and legal assistance attorneys who regularly counsel service members on indebtedness issues. When compared against the common characteristics listed above, the five products reviewed in the Report to Congress measure up somewhat differently:

Lending product	Without regard for borrowers' ability to repay	Excessive fees and interest	Unrealistic payment schedule	Repeated rollover/refinancing
Payday loan	X	X	X	X
Vehicle title loan	X	X	X	X

Lending product	Without regard for borrowers' ability to repay	Excessive fees and interest	Unrealistic payment schedule	Repeated rollover/refinancing
Military installment loan		X		
Refund anticipation loan		X		
Rent-to-own	X	X		

A major concern of the Department has been the debt trap some forms of credit can present for Service members and their families. The combination of little-to-no regard for the borrower's ability to repay the loan, unrealistic payment schedule, high fees, and interest and the opportunity to roll over the loan instead of repaying it, can create a cycle of debt for financially overburdened Service members and their families.

Consumer groups, news media, and academics have chronicled concerns about payday loans and the propensity for this lending practice to create a cycle of debt. For example, M. Flannery and K. Smolyk state the following in their June 2005 FDIC Financial Research Working Paper No. 2005–09:

> Although as economists we find it hard to define what level of use is excessive, there seems little doubt that the payday advance as presently structured is unlikely to help people regain control of their finances if they start with serious problems.

Likewise, vehicle title loans are similarly structured, with potentially similar results. According to a November 2005 report by the Consumer Federation of America, vehicle title loans are generally made for 30 days with high interest/fee structures (average of 295 Annual Percentage Rate (APR)). Limits on title loans vary by State concerning interest rates, duration, rollover allowances, and rules on repossessing the vehicle. Only four states cap interest rates at less than 100% APR. In many states these loans can be rolled over by the borrower several times if the borrower is unable to pay the principal and interest when due. If not paid or rolled over, many states allow the creditor to repossess the vehicle and in some states the borrower is not entitled to any portion of the proceeds of the vehicle sale. Loan amounts average 55 percent of the value of the vehicle.

Rent-to-own, refund anticipation loans, and some military installment loans present products with high fees and interest. Rent-to-own, which is not covered as credit under the Truth-in-Lending Act (TILA), can represent an expensive alternative to credit when used as a means of purchasing an item. Military installment loans (an installment loan marketed primarily or exclusively to the military) can represent a high cost over the duration of the loan, particularly when other charges are added to the interest rate. Tax refund anticipation loans (RALs) also cost Service members and their families high fees when they can easily obtain rapid returns through electronic filing with the assistance of their installation legal assistance office.

According to the Consumer Federation of America (report dated February 5, 2007) the advantage of RALs is minimal when comparing the speed of the refund (between 7 and 14 days faster) against the cost of the service ($30—$125). Moreover, the APR for this credit can be triple digit. A study by Gregory Elliehausen of the Credit Research Center (CRC) (Monograph #37, April 2005) showed a disproportionate percentage of individuals under 35 years old use RALs. Sixty-one percent of RAL borrowers were below 35 years old, although individuals below 35 years old represent 28.6 percent of heads of households. This is significant since 79 percent of Service members are 35 years old or below.

The reason for using RALs vary. The CRC study showed that 41 percent of borrowers obtain RALs to pay bills, 21 percent due to unexpected expenditures, 15 percent to make purchases, 15 percent because of impatience, and 7 percent for other reasons. Less than one percent said they obtained a RAL to pay for tax preparation. Through the Armed Forces Tax Council, in collaboration with the IRS, Volunteer Income Tax Assistance sites are located on most active duty military installations to assist Service members and their families with preparation and electronic filing of their tax returns.

As with other forms of short-term, high cost credit, the Department would prefer Service members and their families to consider low cost alternatives to resolve their financial crisis by establishing a more solid footing for their personal finances. The CRC study found that users of RALs and payday loans both had similar levels of debt and patterns of credit use. Additionally, through education the Department attempts to persuade Service members that planning is an important part of managing finances, and a high cost 10-day loan does not reinforce this lesson.

The five products reviewed in the Report to Congress represent two kinds of financial problems for Service members and their families: Those products that contribute to a cycle-of-debt (payday and vehicle title loans) and those products that can cost the military consumer high fees and interest costs (rent-to-own, installment loans and refund anticipation loans). Cycle of debt represents a more significant concern to the Department than the high cost of credit.

The Department considered the five products in developing the regulation. Trade associations and financial institutions expressed their concern that the regulation needed to be very clear about when the provisions of the statute applied. During our consultation with the Federal regulatory agencies, they reiterated the need for ''clear lines'' around definitions of covered consumer credit and the impacted creditors.

The regulation has focused on credit products that have, in general practice, terms that can be detrimental to military borrowers. Rent-to-own services provide rental opportunities (not covered by the Department's rule making), as well as options for ownership which are not loans under TILA. As a consequence, rent-to-own products and services were not covered. Likewise, there are installment loans with favorable terms and some with terms that can increase the interest rate well beyond the limits prescribed by 10 U.S.C. 987. Isolating detrimental credit products without impeding the availability of favorable installment loans was of central concern in developing the regulation. Consequently, installment loans that do not fit the definition of ''consumer credit'' in Section 232.3(b), including the definition of ''payday loans,'' ''vehicle loans,'' or ''tax refund anticipation loans'' are not covered by the regulation. The Department's intent is to balance protections with access to credit. The protections posed in the statute assist Service members, when applied with precision to preclude unintended barriers.

Alternatives

The Department prefers that Service members and their families who experience financial duress seek help through Military Aid Societies, military banks and defense credit unions rather than credit products that would more likely mire them in a cycle of debt. These institutions have established programs and products designed to help Service members and their families resolve their financial crises, rebuild their credit ratings and establish savings.

The Military Aid Societies are strong advocates for limiting the cost associated with credit and for creditors to develop alternative products for Service members who cannot otherwise qualify for loans. Within their own resources they provided $87.3 million in no-cost loans and grants to Service members and their families in 2005. These funds were provided for emergencies and essentials, such as rent, food, and utilities.

Financial institutions located on military installations also understand the need to provide products and services that can help those who mishandle their finances and who may need remedial assistance. A review of on-base financial institutions surfaced 24 programs on 51 military installations in the U.S. providing alternative small loan products designed to help Service members and their families to recover from their financial problems. These financial institutions supplement the emergency funding made available by the nonprofit Military Aid Societies that provide grants and no-interest loans to needy Service members and families.

These financial institutions provide low denomination loans at reasonable APRs designed to assist their members who need to get out of high cost credit and into more traditional lending products. Financial counseling and education are often prerequisites for the short term loans and some institutions have attached a requirement to develop savings as part of the loan.

Many of these military banks and credit unions use their products and services to maintain a watchful eye over their members to ensure they do not abuse services designed to assist them, such as overdraft protection, which if used on a chronic basis, can become very expensive and propel someone already overextended into a deeper spiral of debt. Representatives of the Association of Military Banks of America had an opportunity to showcase their alternative small loan products at a FDIC Conference in December of 2006. FDIC hosted this conference to spotlight the need to develop more of these types of products for Service members and their families and several financial institutions described above that currently provide such favorable credit to Service members participated in the conference.

Subsequent to the conference, FDIC issued guidelines to FDIC-supervised banks to encourage them to offer affordable small-dollar loan products. These guidelines explore a number of aspects of developing alternative small loan products, including affordability and streamlined underwriting. They also discuss tools such as financial education and savings that may address long-term financial issues that concern borrowers.

At the same time, the FDIC approved a two-year pilot project to review affordable and responsible small-dollar loan programs in financial institutions. The project is designed to assist institutions by identifying information on replicable business models for affordable small-dollar loans. FDIC expects to identify best practices resulting from the pilot that will become a resource for institutions. The Department supports the FDIC's efforts with the guidelines and the pilot project as they both will help encourage banks to meet the demand for small-dollar loans at more reasonable costs for the borrower.

Efforts To Curb the Prevalence and Impact of Predatory Loans

The Department has found that it has a small window of opportunity to convince and inform Service families about products and services beneficial to their particular situations, a job complicated by many contrary messages and enticements. Nonetheless, the Department has attempted to use the processes and resources available within the Department to curb the prevalence of high cost short term lenders, particularly those that can contribute to a spiral of debt.

Predatory lenders have seldom been placed off-limits, primarily because the process associated with placing commercial entities off-limits, through the review and recommendations of the Armed Forces Disciplinary Control Board (AFDCB), is not well suited to this purpose. The AFDCB, covered by Joint Army Regulation 190–24, is designed to make businesses outside of military installations aware that their practices raise morale and discipline concerns and to offer these businesses an opportunity to modify their practices to preclude being placed off-limits. When the commercial entity refuses to comply, the AFDCB recommends that the regional command authority place the business off-limits for all Service members within the region (regardless of Service).

Normally concerns are raised when a business has violated State or Federal laws. Remediation involves the business curtailing these illegal practices. In the case of the loan products listed above, businesses usually offer their services within the legal limits. Since the AFDCB takes on businesses one at a time, bringing a lender under scrutiny has been difficult if the lender is complying with the same rules as its competitors. Additionally, the magnitude of mediating with the number of outlets surrounding military installations has exacerbated the process. Numerous payday lenders can be found in communities around military installations (Graves and Peterson, Ohio State Law Journal, Volume 66, Number 4, 2005).

Also without clear standards and prohibitions, commanders and AFDCBs cannot easily identify what remediation lenders offering payday, auto title, and refund anticipation loans should take. In states without relevant laws, Commanders and AFDCBs must not only establish rules, but they must also educate those affected and then monitor their compliance.

As stated above, the Department will continue to provide education, awareness, and counseling programs to influence skills and attitudes towards managing personal resources wisely. There still remains a gap between the opportunity to influence a young Service member or family member concerning the best way to manage their finances, and the level of experience and capability necessary to be successful. The Department has a limited opportunity to impress upon these young people the importance of managing their resources. It does not have sufficient control over the behavior of Service members and their families to preclude them from taking on financial risks that can detract from not only their quality of life, but also military mission accomplishment.

The Department will continue to send Service members messages that they and their families need to manage their resources wisely for their own benefit and to maintain personal readiness. The Department's call for responsibility competes with market messages from the sub-prime financial industry to get cash now for purchases, vacations, and paying bills. Their marketing stresses the ease and convenience of obtaining these loans, with a virtual guarantee of approval. These messages can be particularly alluring to Service members

and families already overburdened with bills and debts. A 2006 survey accomplished by the Consumer Credit Research Foundation concluded that Service members choose payday loans primarily because they are convenient. Certainly, obtaining ''fast cash'' from a payday lender is far easier than coming to terms with delinquent debt or addressing inherent overspending that creates situations where sub-prime loans are needed.

Service members have inherently understood that limits on interest rates are appropriate, even if these limits would decrease the availability of credit. When asked in a 2006 survey conducted by the Consumer Credit Research Foundation if Service members strongly agree, somewhat agree or disagree with the statement: ''The government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit,'' over 74 percent of the Service members surveyed agreed with the statement (over 40 percent strongly agreed). Similarly when asked their position on the statement ''There is too much credit available today,'' 75 percent of Service members not using payday loans and 63 percent of Service members using payday loans agreed (51 percent of non-users strongly agreed).

''Limitations on Terms of Consumer Credit Extended to Service Members and Dependents,'' John Warner National Defense Authorization Act for Fiscal Year 2007, Section 670, Codified at 10 U.S.C. 987

10 U.S.C. 987 directs the Secretary of Defense to establish and implement regulations concerning consumer credit services for Service members. Implementing regulations must be completed and published prior to October 1, 2007, after consultation with the Department of Treasury, Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, Federal Trade Commission, Federal Deposit Insurance Corporation, and the National Credit Union Administration. Specifically, section 987(h)(2) requires the Secretary of Defense to issue regulations establishing the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of ''creditor'' under paragraph (5) and ''consumer credit'' under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

This broad latitude allows the Department to determine the scope and impact of the regulation, consistent with the provisions of the statute. These provisions have been established to protect Service members and their families from potentially abusive lending practices and products. The statute provides several limitations on credit transactions, and allows the Department to focus these limitations on areas of greatest concern.

As noted in the preamble to the proposed rule, the Department has learned of the potential for unintended consequences that could adversely affect credit availability if it were to adopt a broadly applicable regulation. Some comments received suggested that one way to limit the potential adverse and unintended consequences of the statute would be to adopt a regulation that provided for a general or conditional exception for credit products offered by insured depository institutions and their subsidiaries. While the proposed rule did not include any exceptions for insured depositories or their subsidiaries, the Department explicitly asked for comment on the issue.

Most respondents to the request for comments addressed the question of whether the final rule should exclude insured depository institutions from coverage generally or in limited circumstances. Almost all representatives of insured depository institutions strongly supported the Department exempting lenders that are subject to supervision by a Federal banking agency. They noted that these institutions have not been identified as engaging in predatory lending practices. Consumer representatives, on the other hand, as well as the FTC staff who provided comment on this issue, did not favor making distinctions in the ''creditor'' definition based on whether or not the lender was subject to supervision by Federal banking agencies.

Comments from lending institutions about the need for a general or limited exemption of Federally-insured depository institutions and their subsidiaries from this regulation were tempered in part by their support of the proposed definition of ''consumer credit,'' which is limited to potentially abusive credit products identified by the Department in its report to Congress. Specifically, they noted that if the regulations were expanded to cover a wider range of financial products, the need for an exemption of insured depository institutions from this regulation would be increased to ensure that Service members and their dependents have access to affordable credit by responsible lenders.

The intent of the statute is clearly to restrict or limit credit practices that have a negative impact on Service members without impeding the availability of credit that is benign or beneficial to Service members and their families. The Department has determined that given the limited types of credit products covered by the rule, an exemption for depository institutions is not needed to ensure access to beneficial credit by Service members and their dependents. Accordingly, the final rule does not provide exemptions for insured depository institutions or their subsidiaries. As noted above, Federally-supervised financial institutions that commented appeared to be concerned about future iterations of the regulation and the potential for the regulation to impact their ability to provide beneficial credit to Service members and their families. If the Department considers it necessary to reconsider the products included as covered consumer credit, the issue of such exemptions would also be reconsidered.

II. Description of the Regulation, by Section

232.1 and 232.2, Authority, purpose and coverage, and Applicability: No comments were received on these provisions. The provisions in the proposed rule are being adopted without substantive change.

232.3, Definitions: In implementing the statute, the Department has defined the terms ''creditor'' and ''consumer credit'' judiciously, having heard from numerous groups through comments received in response to **Federal Register** notice DoD–2006–OS–0216, solicited and unsolicited comments, and through meetings requested of the Department that applying the provision broadly would create numerous unintended consequences. These unintended consequences would have a ''chilling effect'' on the availability of consumer credit for Service members and their dependents in circumstances that are not necessarily predatory.

In defining the term ''creditor,'' the statute provides the following:

(5) CREDITOR.—The term ''creditor'' means a person—

(A) Who—

(i) Is engaged in the business of extending consumer credit; and

(ii) Meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) Who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

Consistent with the statute, the final rule defines ''creditor'' as any person who extends consumer credit covered by part 232. For this purpose a ''person'' includes both natural persons as well as business entities, but would exclude governmental entities. Pursuant to the Department's authority to specify additional criteria, a person would be a creditor only if the person is also a ''creditor'' for purposes of the Truth in Lending Act (TILA). Section 987(c) of 10 U.S.C. provides that the disclosures required by that section be presented along with the disclosures required under TILA, and in accordance with the terms prescribed by the regulations implementing TILA. Thus, it does not appear that section 987 was intended to apply to persons or transactions that are not covered by TILA.

For clarity, the Department has implemented the provision covering assignees by including a specific reference to assignees in each section of the regulation that would apply to an assignee, in lieu of including assignees in the definition of ''creditor.'' See sections 232.4, 232.8 and 232.9.

The definition of consumer credit provided in the statute is as follows:

(6) CONSUMER CREDIT.—The term ''consumer credit'' has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) A residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

It is clearly the intent of the statute that the Department define which types of consumer credit transactions shall be covered by the law, provided that they do not include the two listed exemptions. This is because the statute authorizes the Department to specify additional criteria for an entity to be considered a creditor that is engaged in the business of extending consumer credit. The Department has exercised this authority by limiting the rule's applicability to creditors that engage in certain types of consumer credit transactions. Accordingly, the final rule focuses on three problematic credit products that the Department identified in its August 2006 *Report to Congress on the Impact of Predatory Lending Practices on Members of the Armed Forces and Their Dependents:* payday loans, vehicle title loans, and refund anticipation loans. The Department's definition of the term ''consumer credit'' in the proposed rule was intended to narrow the regulation's impact to consumer credit products and services that are potentially detrimental and for which there are DoD-recommended, alternative products or services available to Service members and their dependents. DoD believes that a narrow definition will prevent unintended consequences while affording the protections granted by the statute.

After review of comments received through the **Federal Register** publication of the proposed rule, the Department believes that the scope of the regulation as proposed is appropriate to address the concerns that formed the basis of its report to the Congress. Comments received from consumer advocates and some others expressed the view that the Department's proposed definition of ''consumer credit'' was too narrow and that creditors could restructure their loan products to make high-cost extensions of credit while avoiding coverage under Part 232. Comments received from representatives of federally-insured depository institutions generally supported the consumer credit definition in the proposed rule.

The Department continues to believe that the scope of the proposed rule and the definition of consumer credit are appropriate. The Department maintains the ability to issue additional rules in the future and the Department plans to continue surveying Service members and their dependents to collect data on their use of credit products. The Department will also monitor market developments that affect Service members and will obtain a variety of inputs from regulatory agencies, consumer protection groups and the credit industry to assess the level of protection provided by the final rule. The Department will review this data to determine if further revisions are needed. Accordingly, the proposed definition of ''consumer credit'' is being adopted without substantive change. The Department has made technical changes to the regulation to clarify that the consumer credit defined in the regulation is closed-end credit and not open-end credit.

With respect to exclusion of ''residential mortgages'' the final rule adopts the proposed rule's exclusion which applies to any credit transaction secured by an interest in the borrower's dwelling. Thus, home-purchase transactions, refinancings, home-equity loans, and reverse mortgages would be excluded. Home equity lines of credit are also excluded. In addition, the property need not be the consumer's primary dwelling to qualify for the exclusion. A ''dwelling'' includes any residential structure containing one to four units, whether or not the structure is attached to real property, and would also include an individual condominium unit, cooperative unit, mobile home, or manufactured home.

Payday Loans

Payday loans have common characteristics that make them detrimental to a Service member's financial well being and inferior to alternative sources of emergency support. These characteristics can exacerbate a cycle of debt, particularly if the borrower is already over-extended through the use of other forms of credit. The final rule defines ''payday loans'' based on certain characteristics, in order to distinguish them from other financial products. A payday loan is defined as *a closed-end credit transaction having a term of 91 days or fewer, where the amount financed does not exceed $2,000.* The ''amount financed'' is not defined in this regulation, but must be determined based on the definition of that term in the Federal Reserve Board's Regulation Z, which implements the TILA. In addition, the definition of ''payday loan'' is limited to transactions where the borrower contemporaneously provides a check or other payment instrument that the creditor agrees to hold, or where the borrower contemporaneously authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account.

Payday loans, otherwise known as deferred presentment loans, are allowed in 39 States as a separate credit product from other forms of credit regulated by Federal or State statute. States authorizing these types of loans require payday lenders to obtain a license to operate within the State. States have defined these products and services, primarily through the basic process used to secure a payday loan, either through holding a check or by obtaining access to a bank account through electronic means. These basic processes have been included as part of the definition of payday loans in the regulation (Section 232.3(c)). Many States have also established limits to the amount that can be borrowed and the duration of the loan as part of the authorized activities of lenders licensed to offer these products and services. A review of State limits for payday loans

establishes a foundation for the definition used in this regulation.

The majority of States have a maximum dollar amount, maximum time limits and maximum fees that trigger regulation. Six States (New Mexico, Oregon, Texas, Utah, Wisconsin and Wyoming) have no dollar limit on the amount that can be loaned, and nine States (Alaska, Arizona, Idaho, New Mexico, Rhode Island, South Dakota, Virginia, Wisconsin and Wyoming) have no maximum limit established for the duration of a payday loan. Of the States that impose limits on the loan amount or loan duration, the highest dollar limit is $1,000 (Idaho and Illinois) and the longest permissible loan term is 180 days (Ohio). The average dollar limit is $519 and the average limit on loan term is 46 days.

Payday loans offered over the internet often originate in States with no limits on fees or maximum loan amounts. A survey of websites offering payday loans indicates $1,500 as generally the maximum amount loaned. A review of sites marketing ''Military Payday Loans'' refer to loans of up to 40 percent of a Service member's take home pay. This amount can vary considerably based on rank, other entitlements, tax withheld and military allotments. For married enlisted Service members in the grade of E–6 and below (no deductions for taxes or other allotments), the $2,000 limit in the final rule would cover a loan made for 40 percent of take-home pay. The limits established in the definition for payday loans reflect the maximum duration and amount anticipated for loans based on current State practices, to include internet payday loans originating from locations without limits.

Many respondents expressed some concern that the four-part definition of payday loans may allow creditors to change one aspect of their product to evade the regulation, such as extending the length of the loan or extending open-end credit. The Department's intent is to balance these concerns against the concerns expressed by other respondents that the definition should remain as narrow as proposed to preclude unintended consequences regarding short-term, small-dollar credit availability for covered borrowers. Most financial institutions requested that the definitions of consumer credit clearly specify that they apply to closed-end loans to preclude misinterpretations.

Industry and consumer group respondents requested clarification of the payday loan definition. Specifically, they sought to clarify that borrowers must provide a check to the creditor or authorize a debit to the borrower's deposit account contemporaneously with the borrower's receipt of funds, and not contemporaneously with the payment of interest or fees. Section 232.3(b)(1)(i) of the final rule has been modified to make this clarification.

The definition of ''payday loans'' includes transactions where the covered borrower receives funds and contemporaneously authorizes the creditor to initiate a debit or debits to the borrower's deposit account. However, there is an exclusion to this definition in 232.3(b)(1)(i)(A): ''*This provision does not apply to any right of a depository institution under statute or common law to offset indebtedness against funds on deposit in the event of the covered borrower's delinquency or default.*'' This exclusion only applies to a depository institution's right of offset under State or other applicable law.

Vehicle Title Loans

The Department believes that vehicle title loans should be included within the definition of consumer credit, and that covering such transactions is consistent with the law's purpose. The definition for ''vehicle title loans'' limits the rule's coverage to loans of 181 days or fewer. Many States have not established statutes overseeing these loans. A 2005 survey of States conducted by the Consumer Federation of America found that, of the 16 States authorizing vehicle-title lending, 10 require 30-day or one-month term limits (with authorized renewals or extensions), and one State allows up to 60 days (with 6 renewals). Four States do not establish term limits.

Some consumer groups remarked that the scope of the definition for vehicle title loans may not encompass all practices used by creditors to provide high-cost, short-term vehicle title loans. Some industry respondents said the restrictions in the regulation may make some creditors reluctant to offer beneficial loans to covered borrowers with poor or no credit history. However, the majority of federally-insured depository institution respondents said that their loans that use vehicles as collateral would be unaffected since they are made for longer than 181 days.

As with payday loans, the Department has sought to balance the definition of vehicle title loans to reflect the countervailing concerns of respondents. The Department does not want protections from high-cost, short-term vehicle title loans to unnecessarily inhibit covered borrowers from accessing beneficial loans for which a vehicle is used as collateral.

Comments received from a group of bank trade associations asked that the rule clarify that ''motor vehicle'' only includes vehicles which must be registered pursuant to state law. The final rule has been modified to make this clarification.

Refund Anticipation Loans

The Department believes that covering RALs is consistent with the intent of the statute. They have been included because survey data has shown RALs to be the second most prevalent high cost loan used by Service members, and because alternatives that can expedite their tax returns are available, generally at no cost. Some states have also addressed concerns with RALs. Connecticut has established a rate cap for RALs, prohibiting transactions where the APR exceeds 60 percent. Other states, such as California, Washington, Oregon, and Nevada, have established statutes specifying disclosure requirements for RALs. Respondents representing tax preparers and financial institutions providing RALs objected to being included in the definitions of covered consumer credit products, stating their product does not contribute to a cycle of debt or place a critical family asset at risk.

Credit union trade association respondents and bank trade association respondents said the inclusion of RALs in the rule would have little impact on their members because so few of them make these loans, and the few that do make them will likely cease doing so because of the rule's requirements. The Department believes that its definition of RALs limits unintended consequences and allows for refunds to be provided expeditiously.

One commenter expressed concern that the rule could be construed to apply when a borrower notes that the source of repayment is the tax refund. The intent of the regulation is to cover credit products that are designed expressly to use tax refunds as the collateral for the loan. The rule does not cover loans where borrowers merely note that a tax refund may be used to repay the advance. To ensure the Department's intent is clear, the word ''expressly'' has been repeated in the RAL definition to modify the statement concerning repayment of the loan.

Loans Where the MAPR Is Less Than 24%

In its proposal the Department solicited comments on other approaches that would encourage lenders to offer responsible, small-dollar, short-term loans that meet the credit needs of Service members and their dependents. For example, comment was solicited on whether loans should be exempt from

coverage under Part 232 if the MAPR were less than 24%.

Industry respondents generally said that such an exemption would have little impact on credit products defined in the regulation because the credit product definitions are already narrow enough in scope to leave institutions room to provide affordable small-dollar loans to Service members and their dependents. Some consumer groups favored such an exemption only if it were part of a ''safe harbor'' accompanied by significantly broader definitions of covered credit products. The Department has not adopted an MAPR-based exemption from the definition of consumer credit in the final rule to include this recommendation. To accommodate current and potential small-dollar, short-term loan programs, the Department has already made allowances in the regulation for credit products that are within the MAPR limit of section 232.4(b) and believes these are sufficient to support lower cost alternatives.

Definition of MAPR

The definition of MAPR creates a distinctive percentage rate that reflects the provisions of the statute. The MAPR does not include fees imposed on the borrower for unanticipated late payments, default, delinquency or a similar occurrence, because such fees are imposed as a result of contingent events that may occur after the loan is consummated. Thus, such fees are not included in the computation of the maximum 36% MAPR cap imposed by these rules.

Many respondents expressed concern that disclosing both an MAPR and an APR to Service members and their dependents would cause confusion. The statute requires that the MAPR be presented to the covered borrower. The Department will take steps to educate Service members and their dependents on the MAPR.

While acknowledging that the narrow scope of the rule will ease the potential for confusion, comments from industry representatives sought to modify the MAPR definition to make it as close as possible to the APR disclosed under TILA. By contrast, consumer groups contended that the MAPR definition should include all cost elements, and should not contain exclusions in the proposed rule, such as for actual unanticipated late payments.

The Department has designed the definition of MAPR within the context of the consumer credit covered by the regulation. The Department's intent is to ensure that the credit products covered by the regulation cannot evade the 36 percent limit by including low interest rates with high fees associated with origination, membership, administration, or other cost that may not be captured in the TILA definition of APR.

Some industry respondents were concerned about including costs in the MAPR that are ''associated with the extension of consumer credit'' because this may include costs for products or services that are purchased in connection with a loan, but are not required. For example, industry respondents argue that ancillary products (such as voluntary credit insurance and debt cancellation coverage) should not be included in the MAPR calculation because these products may protect borrowers against being burdened with debt if a covered event occurs.

The Department believes the definition is consistent with the statute and is appropriate in the context of the consumer credit covered by the rule. The Department is concerned that Service members are sold products such as voluntary insurance without having these credit insurance products placed in the context of the Service member's employment status or his or her current level of insurance coverage. Additionally, the Department is concerned about small loans that are associated with sales of products or services not related to the loans, such as credit offered as part of Internet access or catalog sales. The definition has been designed to cover sales such as these or sales similar to those mentioned in this paragraph and considers them ''associated with the extension of consumer credit.''

One commenter expressed concern that only fees for ''actual unanticipated'' late payments would be excluded from the MAPR, because some borrowers might notify the lender if they know their payment will be late. The language in the proposed rule tracks the language in section 226.4(c)(2) of Regulation Z, which excludes such fees from the APR disclosed under TILA. The intent is to exclude charges from the MAPR that the lender does not anticipate under the terms of the agreement. The language in the final rule is being adopted as proposed, so that creditors determinations under Part 232 will be consistent with their existing practice under TILA.

The final rule also has been revised to clarify that the MAPR does not include certain taxes or fees prescribed by law, such as fees paid to public officials in connection with perfecting a security interest. See § 232.3(h)(2)(i) and (ii). The revision is being made for consistency with the Federal Reserve Board's Regulation Z, which does not require such charges to be included in the APR disclosed under TILA.

Industry respondents also requested that the final rule clarify that the definition of ''consumer credit'' be limited to closed-end transactions so that the rules are not unintentionally interpreted to include credit cards. Many respondents stated it was not clear whether the rule included open-end credit and that it is important that the final rule explicitly state it is limited to the three listed closed-end credit products. In order to clarify that the regulation covers only closed-end credit, the definition in 232.3(b) has been modified to include the words ''closed-end'' as part of the definition of covered consumer credit.

232.4, Terms of consumer credit extended to covered borrowers: This section implements the statutory prohibition limiting the amount that creditors may charge for extensions of consumer credit to covered borrowers. The proposed rule mirrors the statutory language. This section also applies to ''assignees'' consistent with the statutory definition of ''creditor.''

232.5, Identification of covered borrower: The Department has received several comments expressing concern over the potential difficulty in identifying a covered borrower, particularly in light of the penalties for failing to provide the statutory protections to a covered borrower. While the Department recognizes this concern, the Department would emphasize that identifying the covered borrower is only relevant in the context of transactions defined by the regulation as consumer credit (for payday loans, vehicle title loans and refund anticipation loans).

Some respondents expressed concern that imposing a duty on creditors to identify dependents of active duty Service members in order to comply with Part 232 would conflict with the Equal Credit Opportunity Act, which is implemented by the Federal Reserve Board's Regulation B. These respondents noted that under Regulation B, a creditor may not inquire about a credit applicant's marital status. The Department notes, however, that the final rule does not require creditors to inquire about marital status. The ''covered borrower identification statement'' contained in § 232.5(a) of the final rule requests credit applicants to identify if they are a dependent based on any of the listed criteria (spouse, child or individual for whom the member provides financial support), but

does not require an applicant to specify which one of these applies in their specific case. Accordingly, the ''covered borrower identification statement'' does not inquire about an applicant's marital status. The Department also notes that § 202.5(a)(2) of the Federal Reserve's Regulation B states that creditors may obtain information required by federal statutes or regulations. The Department has consulted with staff of the Federal Reserve Board, and they agreed with the Department's analysis.

The Department's intent is to balance protections for covered borrowers (according to the statute) while also addressing creditors' need to have some degree of certainty in determining that the loans they make are in compliance with the statute as implemented by Part 232. The Department understands creditors may otherwise decline offering beneficial credit products to covered borrowers as a result of concerns over potential violations. To achieve an appropriate balance, the Department has proposed a safe harbor, under which the creditor may require the applicant to sign a statement declaring whether or not he or she is a covered borrower (using the definition from the statute). If required by the creditor, this declaration provides a ''safe harbor'' for the creditor to prevent inadvertently violating the statute by failing to recognize a covered borrower. For creditors who provide consumer credit, as defined by the regulation, by means of the Internet, the applicant can provide an electronic signature that fulfills the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.

There is one caveat to this ''safe harbor'' provision. If the loan applicant signs a declaration that denies being a covered borrower, but the creditor obtains documentation as part of the credit transaction reflecting that the applicant is a covered borrower (such as, a current military leave and earning statement as proof of employment), the applicant's declaration would not create a safe harbor for the creditor. In such cases, creditors should seek to resolve the inconsistency, but if they are unable to do so, they may avoid any risk of noncompliance by treating the applicant as a covered borrower based on the documentation or by declining to extend credit due to the inability to verify information provided in the borrower's signed declaration.

This caveat prevents creditors from using the declaration to allow covered borrowers to waive their right to the protections provided by the regulation. This may occur when the creditor recognizes the applicant is a covered borrower as a result of the documents presented as part of the credit transaction. The intent of this caveat is not to hold the creditor accountable for false statements made by an applicant when there is no indication through the credit transaction that the applicant is a covered borrower.

In contrast, when an applicant claims to be a covered borrower without presenting proof of status, further validation by the creditor is not required. However, creditors have the option of verifying the applicant's status as a covered borrower using several sources of information, but they are not required to do so. Thus, creditors may request applicants to provide proof of their current employment and income, for example by requesting from service members a copy of the most recent month's military leave and earning statement. Creditors may also request Service members or dependents to provide a copy of their military identification card.

These sources, however, might not always be determinative. For example, in some cases a leave and earnings statement might not reflect a recent change in the applicant's active duty status. Military identification cards, which are the same as identification cards carried by members of the active component, are issued to members of the National Guard and the Reserve regardless of their duty status. Hence, the final rule states ''*[u]pon such request, activated members of the National Guard or Reserves shall also provide a copy of the military orders calling the covered member to military service and any orders further extending military service.*'' This would also be the case for their dependents. The final rule does not provide a safe harbor to creditors in the situation described in this paragraph.

It is the Department's understanding that providing proof of employment is a prerequisite to receiving a payday loan or a vehicle title loan. The military leave and earning statement is the document that provides validation of employment.

The Department will provide access to a database to creditors to validate the status of an applicant. This arrangement is currently available to creditors to validate the active duty status of Service members as part of implementation of benefits authorized by the Servicemembers Civil Relief Act (*https://www.dmdc.osd.mil/scra/owa/home*). The proposed database (available at *http://www.dmdc.osd.mil/mla/owa/home*), will include the status of covered borrowers and can be used to resolve questions creditors may have about the status of an applicant who denies being a covered member and yet presents information during the credit transaction that is contrary to this declaration. In these situations, the database would provide the most accurate verification of the status of the applicant, to include activated members of the National Guard and Reserve and their dependents.

232.6, Mandatory disclosures: Section 232.6 describes the disclosures that must be provided to covered borrowers before they become obligated on a consumer credit transaction. This includes the new disclosures established under 10 U.S.C. 987 and also includes disclosures that creditors are already required to provide pursuant to the Federal Reserve Board's Regulation Z, which implements the TILA. Regulation Z contains certain requirements pertaining to the format of the TILA disclosures for closed-end credit transactions, including a requirement that they ''shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related'' to the disclosures required under Regulation Z. The Department intends that the disclosures required under this proposal be provided consistent with the format requirements of Regulation Z. Accordingly, the covered borrower identification statement described in § 232.5 and the disclosures provided pursuant to § 232.6(a)(1), (3), and (4) should not be interspersed with the TILA disclosures.

The general rule is that disclosures required by § 232.6(a) (1), (3), and (4) must be provided orally as well as in writing. However, in credit transactions entered into by mail or on the Internet, a creditor complies with this requirement if the creditor provides covered borrowers with a toll-free telephone number on or with the written disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose. Consumer groups that commented stated that providing borrowers with a toll-free telephone number would not be sufficient because it places the burden on the borrower instead of the lender. Many industry respondents expressed concern about the costs of providing the disclosures, to include developing software, training employees about the new rules, and updating all their forms. The Department believes providing consumers with a toll-free telephone number to access oral disclosures fulfills the intent of the statute and balances overall considerations for protection with access to credit.

The Department has received several comments about potential disparities in disclosures required by this part as opposed to TILA. Many respondents felt that the current APR disclosures are barely understood by consumers and that adding a new MAPR disclosure to the mix will only serve to create more confusion. As with other aspects of the statute, the Department's intention has been to develop a regulation that is consistent with the statutory intent. The Department recognizes the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by this regulation and the APR required by TILA). As previously stated, the Department is responsible for training Service members and making similar education available for spouses. The differences between APR and MAPR will be added to their training, along with explaining their rights as a covered borrower. Some respondents sought clarification on whether MAPR disclosures would be required in advertising. These same respondents suggest that including MAPRs and APRs in marketing initiatives would be confusing to consumers. Under section 232.6 of the final rule, creditors must provide the required disclosures in writing before consummation of the transaction. Disclosure of the MAPR in advertisements is not required.

232.7, Preemption: The final rule implements the statute. Although, revisions have been made, this section has been drafted to clarify the statutory language, no substantive change is intended.

Some respondents expressed concern about the adequacy of enforcement for lenders that are not subject to enforcement by the federal depository institution supervisory agencies. The Department does not view the regulation as having substantial direct effects on States, or distribution of power and authority. States determine whether they will enforce the regulation or not for creditors under their jurisdiction. Associations of state supervisors recommended the Department seek written agreements between the Department and state regulatory agencies about enforcement, supervision, and information sharing to help state authorities enforce those areas that will normally fall under their jurisdiction. The Department intends to rely on federal and state regulators to oversee or enforce compliance with the final rule, to the extent possible under their statutory authority, for their respective creditors.

232.8, Limitations: Section 232.8(a) implements the statutory provision in 10 U.S.C. 987(e)(1), which prohibits a creditor from extending consumer credit to a covered borrower in order to roll over, renew, or refinance consumer credit that was previously extended by the same creditor to the same covered borrower.

The proposed regulation includes a limited exception to this prohibition, however, to permit workout loans and other refinancings that result in more favorable terms to the covered borrower, such as a lower MAPR. Most respondents agree that workout loans and other refinancings that are on ''more favorable terms'' for the borrower should be allowed. However, many respondents thought the standard for applying the exception was too subjective and would create uncertainty about what terms are considered ''more beneficial.'' Respondents suggested that financial institutions might err on the side of caution and forego entering transactions that could benefit the borrower in order to avoid any potential liability. Some respondents proposed specific ways to give creditors more certainty, such as by permitting creditors to show how the refinancing benefits the borrower or by allowing any refinancing initiated by the covered borrower.

The final rule does not identify additional examples of ''more favorable terms,'' because the Department has determined the definition currently included in the regulation is sufficient to allow creditors to provide workout loans on the basis of factors other than a lower MAPR that result in more favorable terms. By not limiting the phrase ''more favorable terms'' to a limited set of circumstances, covered borrowers will be protected without constraining creditors' ability to refinance loans on more favorable terms.

In the proposal, the Department solicited comment on whether it should adopt a rule clarifying that the refinancing or renewal of a covered loan requires new disclosures under § 232.6 only when the transaction would be considered a new transaction that requires TILA disclosures. Respondents' opinions differed, but most respondents stated that consistency between the Department's rules and Regulation Z would be less confusing and easier to implement. To maintain consistency between Part 232 and Regulation Z, the Department is adopting such a rule. See § 232.6(c). Whether or not new disclosures are required in a particular transaction, when a creditor refinances or renews an extension of consumer credit to a covered borrower, the limitations on rates and terms apply in the same manner as they would for the original transaction.

In some cases, a consumer might become a covered borrower after obtaining consumer credit. When consumers request to refinance or renew a short-term loan, creditors are likely to rely on their original determination that the consumer is not a covered borrower. Most respondents agreed that creditors should be able to rely on the original determination that the consumer is not a covered borrower for renewals and refinancings although a few argued for limiting the number of refinancings allowed before new disclosures and borrower identification were required. The Department believes that it would be unnecessarily burdensome to impose a duty on creditors to make a new determination in each transaction given that a change in the borrower's status will infrequently occur with short-term transactions. Accordingly, the final rule does not apply when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by Part 232 because the consumer was not a covered borrower at the time of the original transaction. See § 232.5(d).

Subparagraph (a)(3), in accordance with 10 U.S.C. 987(e)(3), makes it unlawful for any creditor to extend consumer credit to a covered borrower if the ''creditor requires the covered borrower to submit to arbitration *or imposes other onerous legal notice provisions*.'' Many respondents felt that a ban on ''onerous'' legal notice provisions was vague. Some offered examples of what should be considered onerous legal notice provisions, such as threats to use or using criminal process to collect a debt, making a misleading or deceptive statement, and requiring court or hearing costs to be borne by the borrower. Similarly, subparagraph (a)(4), in accordance with 10 U.S.C. 987(e)(4), makes it unlawful for any creditor to extend consumer credit to a covered borrower if the ''creditor demands *unreasonable notice* from the covered borrower as a condition for legal action.'' Industry respondents also requested the rule provide a list of what would be considered an ''unreasonable notice.'' In general, the comments with this provision address a fear it is not clear enough. The Department has determined that the provisions provide adequate explanation of ''unreasonable notice'' and thus has not included specific examples in the final rule of what constitutes ''onerous legal notice'' or ''unreasonable notice.'' It has concluded, that in so far as necessary, the scope of the provision is more

appropriately determined on a case-by-case basis.

Under § 232.8(a)(5) creditors are generally prohibited from extending consumer credit to a covered borrower if the creditor uses a check or other method of access to the covered borrower's deposit account. Section 232.8(a)(5) also lists certain exceptions to the general prohibition. Accordingly, for credit transactions with an MAPR of 36% or less, the creditor may require the borrower to use an electronic fund transfer to repay a consumer credit transaction, require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, or take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transactions. Creditors must also comply with any other applicable statutes governing the use of electronic fund transfers, savings and direct deposit of consumer's salary. Respondents were generally supportive of allowing borrowers to use electronic fund transfers to pay debt if the MAPR is below 36% as conducive to creating flexible alternatives to lower cost consumer credit and helping stop the cycle of debt exacerbated by payday lending. The Department believes the flexibility that 10 U.S.C. 987(h)(2)(E) provides will encourage beneficial alternative loans designed to assist covered borrowers with financial recovery.

As proposed, § 232.8(a)(5) would have prohibited covered borrowers from using a vehicle title as security for any loan, even if the loan complied with the restrictions, limits and disclosure requirements of Part 232. Industry respondents pointed out this was inconsistent with other provisions treating vehicle-secured loans as covered transactions under these rules. The reference to vehicle secured loans in the proposed § 232.8(a)(5) was inadvertent, and has been corrected in the final rule.

Section 8(a)(7) prohibits creditors from charging a prepayment penalty to covered borrowers. The final regulation does not define what constitutes a prepayment penalty, and the Department expects creditors to rely on existing State and Federal laws for guidance.

232.9, Penalties and remedies: This provision incorporates the penalties and enforcement provisions contained in the statute. Section 9 provides, among other things, that any credit agreement subject to the regulation that fails to comply with this regulation is void from inception. It further provides that a creditor or assignee who knowingly violates the regulation shall be subject to certain criminal penalties. No comments were received, and the final rule incorporates the statutory provisions without change.

The statute, however, does not provide explicitly for enforcement of these rules beyond the provisions described above. The Department understands that the federal bank, thrift and credit union regulatory agencies have authority—derived from federal law unique to federally-regulated depository institutions—to enforce these rules with respect to the institutions that they supervise. However, the Department notes that this authority extends to a narrow category of depository institutions that it proposes to cover as ''creditors,'' but it does not extend to other creditors, such as nonbank lenders, that would also be covered creditors and that may be most likely to provide the types of consumer credit restricted by these rules. The Department is concerned that reliance solely on private litigation or criminal prosecution with respect to these other creditors may be insufficient to ensure uniform compliance with these rules with respect to all creditors. The Department understands that the consumer credit covered in the regulation is primarily overseen by state regulatory agencies. Consequently, the Department has made contact with the state regulatory agencies to determine which states plan to enforce the regulation and to determine how best to work with all 50 states on enforcement.

232.10, Servicemembers Civil Relief Act protections unaffected: Section 232.10 incorporates the statutory language, no comments were received on this provision and the final rule is unchanged from the proposal.

232.11, Effective date and transition: Virtually all respondents who would be subject to the rule requested a delayed effective date so that they would have more time to comply with the rules than the proposed 30-day period. Many respondents suggested six months to a year after publication of the final rule would be more reasonable for making the necessary systems changes. Two industry trade associations commented that it will be easier for creditors to comply by the effective date if the final rule remains as narrow in scope as the proposed rule. A consumer group and state regulators that commented believe that 30 days was sufficient.

The Department recognizes the limited time provided to creditors to react to implement the rules. However, the statute does not provide the Department any flexibility in determining the effective date of the statute, which is October 1, 2007. The Department believes this situation is ameliorated somewhat by the fact that the scope of the proposed rule is narrow and the policy decisions embedded in the final rule mirror to a great extent the provisions contained in the proposed rule. This should have afforded applicable creditors ample time to begin preparing for the requirements under the rule.

B. Statutory Certification

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

It has been determined that 32 CFR part 232 is not an economically significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely and materially affect the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal 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.

Nevertheless, the proposed regulation was submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Unfunded Mandates Reform Act (Sec. 202, Pub. Law. 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 tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

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. The North American Industrial Classification (NAIC) for the impacted businesses is 522390—''other financial activities related to credit intermediation.'' According to the 2002 Economic Census, there are approximately 5,205

small businesses related to this classification, with 3,000 of these small businesses having fewer than 5 employees. These 5,205 businesses represent a portion of the 51,725 potential respondents cited in the Paperwork Reduction Act evaluation.

The limitations and disclosures posed by this part impact only a small percentage of the market served by the industries covered by this part. For example according to the payday lending trade association, Service members and their dependents represent approximately one-to-two percent of the payday lending market. Thus there is not a significant economic impact on a substantial number of small entities.

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

Section 232.6 of this rule contains information collection requirements. As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), DoD has submitted an information clearance package to the Office of Management and Budget for review. In response to DoD's invitation in the Proposed Rule to comment on any potential paperwork burden associated with this rule, the following comments were received.

232.6 Mandatory disclosures: Section 232.6 describes the disclosures that must be provided to covered borrowers before they become obligated on a consumer credit transaction. This includes the new disclosures established under 10 U.S.C. 987 and also includes disclosures that creditors are already required to provide pursuant to the Federal Reserve Board's Regulation Z, which implements the TILA. Regulation Z contains certain requirements pertaining to the format of the TILA disclosures for closed-end credit transactions, including a requirement that they ''shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related'' to the disclosures required under Regulation Z. The Department intends that the disclosures required under this proposal be provided consistent with the format requirements of Regulation Z. Accordingly, the covered borrower identification statement described in § 232.5 and the disclosures provided pursuant to § 232.6(a)(1), (3), and (4) should not be interspersed with the TILA disclosures.

The general rule is that disclosures required by § 232.6(a) (1), (3), and (4) must be provided orally as well as in writing. However, in credit transactions entered into by mail or on the internet, a creditor complies with this requirement if the creditor provides covered borrowers with a toll-free telephone number on or with the written disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose. Consumer groups that commented stated that providing borrowers with a toll-free telephone number would not be sufficient because it places the burden on the borrower instead of the lender. Many industry respondents expressed concern about the costs of providing the disclosures, to include developing software, training employees about the new rules, and updating all their forms. The Department believes providing consumers with a toll-free telephone number to access oral disclosures fulfills the intent of the statute and balances overall considerations for protection with access to credit.

The Department has received several comments about potential disparities in disclosures required by this regulation as opposed to TILA. Many respondents felt that the current APR disclosures are barely understood by consumers and that adding a new MAPR disclosure to the mix will only serve to create more confusion. As with other aspects of the statute, the Department's intention has been to develop a regulation that is consistent with the statutory intent. The Department recognizes the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by this regulation and the APR required by TILA). As previously stated, the Department is responsible for training Service members and making similar education available for spouses. The differences between APR and MAPR will be added to their training, along with explaining their rights as a covered borrower. Some respondents sought clarification on whether MAPR disclosures would be required in advertising. These same respondents suggest that including MAPRs and APRs in marketing initiatives would be confusing to consumers. Under section 232.6 of the final rule, creditors must provide the required disclosures in writing before consummation of the transaction. Disclosure of the MAPR in advertisements is not required.

Executive Order 13132 Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

The provisions of this part, as required by 10 U.S.C. 987, override State statutes inconsistent with this part to the extent that state statutes provide lesser protections for covered borrowers than those provided to residents of that State. In this respect, this proposed part, if adopted, would not affect in any manner the powers and authorities that any State may have or affect the distribution of power and responsibilities between Federal and State levels of government. Therefore, the Department has determined that the proposed part has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 32 CFR Part 232

Loan programs, Reporting and recordkeeping requirements, Service members.

■ For the reasons set forth in the preamble, Title 32, Code of Federal Regulations is amended by adding part 232 to read as follows:

PART 232—LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS

Sec

232.1 Authority, purpose, and coverage.
232.2 Applicability.
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Authority: 10 U.S.C. 987.

§ 232.1 Authority, purpose, and coverage.

(a) *Authority.* This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) *Purpose.* The purpose of this part is to impose limitations on the cost and terms of certain defined extensions of consumer credit to Service members and their dependents, and to provide additional consumer disclosures for such transactions.

(c) *Coverage.* This part defines the types of consumer credit transactions, creditors, and borrowers covered by the regulation, consistent with the

provisions of 10 U.S.C. 987. In addition, the regulation:

(1) Provides the maximum allowable amount of all charges, and the types of charges, that may be associated with a covered extension of consumer credit;

(2) Requires creditors to disclose to covered borrowers the cost of the transaction as a total dollar amount and as an annualized percentage rate referred to as the Military Annual Percentage Rate or MAPR, which must be disclosed before the borrower becomes obligated on the transaction. The disclosures required by this regulation differ from and are in addition to the disclosures that must be provided to consumers under the Federal Truth in Lending Act;

(3) Provides for the method creditors shall use in calculating the MAPR, and;

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability.

This part applies to consumer credit extended by creditors to a covered borrower, as those terms are defined in this part.

§ 232.3 Definitions.

Terms used in this part are defined as follows:

(a) *Closed-end credit* means consumer credit other than ''open-end credit'' as that term is defined in Regulation Z (Truth in Lending), 12 CFR part 226.

(b) *Consumer credit* means closed-end credit offered or extended to a covered borrower primarily for personal, family or household purposes, as described in paragraph (b)(1) of this section.

(1) Except as provided in paragraph (b)(2) of this section, consumer credit means the following transactions:

(i) *Payday loans.* Closed-end credit with a term of 91 days or fewer in which the amount financed does not exceed $2,000 and the covered borrower:

(A) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the covered borrower not to deposit or present the check or payment instrument for more than one day, or;

(B) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account (by electronic fund transfer or remotely created check) after one or more days. This provision does not apply to any right of a depository institution under statute or common law to offset indebtedness against funds on deposit in the event of the covered borrower's delinquency or default.

(ii) *Vehicle title loans.* Closed-end credit with a term of 181 days or fewer that is secured by the title to a motor vehicle, that has been registered for use on public roads and owned by a covered borrower, other than a purchase money transaction described in paragraph (b)(2)(ii) of this section.

(iii) *Tax refund anticipation loans.* Closed-end credit in which the covered borrower expressly grants the creditor the right to receive all or part of the borrower's income tax refund or expressly agrees to repay the loan with the proceeds of the borrower's refund.

(2) For purposes of this part, consumer credit does not mean:

(i) Residential mortgages, which are any credit transactions secured by an interest in the covered borrower's dwelling, including transactions to finance the purchase or initial construction of a dwelling, refinance transactions, home equity loans or lines of credit, and reverse mortgages;

(ii) Any credit transaction to finance the purchase or lease of a motor vehicle when the credit is secured by the vehicle being purchased or leased;

(iii) Any credit transaction to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Credit secured by a qualified retirement account as defined in the Internal Revenue Code; and

(v) Any other credit transaction that is not consumer credit extended by a creditor, is an exempt transaction, or is not otherwise subject to disclosure requirements for purposes of Regulation Z (Truth in Lending), 12 CFR part 226.

(c) *Covered borrower* means a person with the following status at the time he or she becomes obligated on a consumer credit transaction covered by this part:

(1) A regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve duty as that term is defined in 10 U.S.C. 101(d)(6), or

(2) The member's spouse, the member's child defined in 38 U.S.C. 101(4), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered by this part.

(d) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(e) *Creditor* means a person who is engaged in the business of extending consumer credit with respect to a consumer credit transaction covered by this part. For the purposes of this section, ''person'' includes a natural person, organization, corporation, partnership, proprietorship, association, cooperation, estate, trust, and any other business entity and who otherwise meets the definition of ''creditor'' for purposes of Regulation Z.

(f) *Dwelling* means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(g) *Electronic fund transfer* (EFT) has the same meaning for purposes of this part as in Regulation E (Electronic Fund Transfers) issued by the Board of Governors of the Federal Reserve System, 12 CFR part 205.

(h) *Military annual percentage rate* (MAPR). The MAPR is the cost of the consumer credit transaction expressed as an annual rate. The MAPR shall be calculated based on the costs in this definition but in all other respects it shall be calculated and disclosed following the rules used for calculating the Annual Percentage Rate (APR) for closed-end credit transactions under Regulation Z (Truth in Lending), 12 CFR part 226.

(1) The MAPR includes the following cost elements associated with the extension of consumer credit to a covered borrower if they are financed, deducted from the proceeds of the consumer credit, or otherwise required to be paid as a condition of the credit:

(i) Interest, fees, credit service charges, credit renewal charges;

(ii) Credit insurance premiums including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements; and

(iii) Fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.

(2) The MAPR does not include:

(i) Fees or charges imposed for actual unanticipated late payments, default, delinquency, or similar occurrence;

(ii) Taxes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest;

(iii) Any tax levied on security instruments or documents evidencing indebtedness if the payment of such

taxes is a requirement for recording the instrument securing the evidence of indebtedness; and

(iv) Tax return preparation fees associated with a tax refund anticipation loan, whether or not the fees are deducted from the loan proceeds.

(i) *Regulation Z* means any of the rules, regulations, or interpretations thereof, issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act, as amended, from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Board of Governors of the Federal Reserve System to issue such interpretations or approvals. Words that are not defined in this regulation have the meanings given to them in Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System (the ''Board''), as amended from time to time, including any interpretation thereof by the Board or an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations. Words that are not defined in this regulation or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law, or contract.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) Neither a creditor who extends consumer credit to a covered borrower nor an assignee of the creditor shall require the member or dependent to pay a military annual percentage rate (MAPR) with respect to such extension of credit, except as—

(1) Agreed to under the terms of the credit agreement or promissory note;

(2) Authorized by applicable State or Federal law; and

(3) Not specifically prohibited by this part.

(b) A creditor described in paragraph (a) of this section or an assignee may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit to a covered borrower.

§ 232.5 Identification of covered borrower.

(a) This part shall not apply to a consumer credit transaction if the conditions described in paragraphs (a)(1) and (a)(2) of this section are met:

(1) Prior to becoming obligated on the transaction, each applicant is provided with a clear and conspicuous ''covered borrower identification statement'' substantially similar to the following statement and each applicant signs the statement indicating that he or she is or is not a covered borrower:

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to sign one of the following statements as applicable:

I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

_____

I AM a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

_____

—OR—

I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

_____

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime

(2) The creditor has not determined, pursuant to the optional verification procedures in paragraphs (b) or (c) of this section, that any such applicant is a covered borrower.

(b) The creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide a current (previous month) military leave and earning statement, or a military identification card (DD Form 2 for members, DD Form 1173 for dependents), as described in DoD Instruction 1003.1, *Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals*, December 5, 1997. Upon such request, activated members of the National Guard or Reserves shall also provide a copy of the military orders calling the covered member to military service and any orders further extending military service.

(c) The creditor may, but is not required to, verify the status of an applicant as a covered borrower by accessing the information available at *http://www.dmdc.osd.mil/mla/owa/home*. Searches require the service member's full name, Social Security number, and date of birth.

(d) This part shall not apply to a consumer credit transaction in which the creditor rolls over, renews, repays, refinances, or consolidates consumer credit in accordance with § 232.8(a)(1) if § 232.5(a)(1) and § 232.5(a)(2) applied to the previous transaction.

§ 232.6 Mandatory loan disclosures.

(a) *Required information.* With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the member or dependent the following information clearly and conspicuously before consummation of the consumer credit transaction:

(1) The MAPR applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR.

(2) Any disclosures required by Regulation Z (Truth in Lending), 12 CFR part 226.

(3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule provided pursuant to paragraph (a)(2) of this section satisfies this requirement.

(4) A statement that ''Federal law provides important protections to regular or reserve members of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, and their dependents. Members of the Armed Forces and their dependents may be able to obtain financial assistance from Army Emergency Relief, Navy and Marine Corps Relief Society, the Air Force Aid Society, or Coast Guard Mutual Aid. Members of the Armed Forces and their dependents may request free legal advice regarding an application for credit from a service legal assistance office or financial counseling from a consumer credit counselor.''

(b) *Method of disclosure.* (1) *Written disclosures.* The creditor shall provide the disclosures required by paragraph (a) in writing in a form the covered borrower can keep.

(2) *Oral disclosures.* The creditor also shall provide the disclosures required by paragraphs (a)(1), (a)(3) and (a)(4) of this section orally before consummation. In mail and internet transactions, the creditor satisfies this requirement if it provides a toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose.

(c) *When disclosures are required for refinancing or renewal of covered loan.* The refinancing or renewal of a covered loan requires new disclosures under § 232.6 only when the transaction

would be considered a new transaction that requires disclosures under the Truth in Lending Act, as implemented by the Federal Reserve Board's Regulation Z, 12 CFR part 226.

§ 232.7 Preemption.

(a) *Inconsistent laws.* 10 U.S.C. 987 as implemented by this part preempts any State or Federal law, rule or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, except that any such law, rule or regulation is not preempted by this part to the extent that it provides protection to a covered borrower greater than those protections provided by 10 U.S.C. 987 and this part.

(b) Different treatment under State law of covered borrowers is prohibited. States may not:

(1) Authorize creditors to charge covered borrowers rates of interest that are higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

(a) 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(1) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower, unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR. This part shall not apply to a transaction permitted by this paragraph when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this part because the consumer was not a covered borrower at the time of the original transaction.

(2) The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 10 U.S.C. 527 *et seq.*).

(3) The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.

(4) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(5) The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR consistent with § 232.4(b):

(i) The creditor may require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by Regulation E (Electronic Fund Transfers) 12 CFR part 205;

(ii) The creditor may require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(iii) The creditor may, if not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

(6) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation.

(7) The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

(b) For purposes of this section, an assignee may not engage in any transaction or take any action that would be prohibited for the creditor.

§ 232.9 Penalties and remedies.

(a) *Misdemeanor.* A creditor or assignee who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) *Preservation of other remedies.* The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under State or Federal law or regulation to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) *Contract void.* Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by this regulation or which contains one or more provisions prohibited under 10 U.S.C. 987 as implemented by this regulation is void from the inception of the contract.

(d) *Arbitration.* Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit to a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

§ 232.10 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of Section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.11 Effective date and transition.

Applicable consumer credit—This part shall only apply to consumer credit that is extended to a covered borrower and consummated on or after October 1, 2007.

Dated: August 27, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

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Federal Register

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August 31, 2007

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Certain Federal Indian Reservations and Ceded Lands for the 2007–08 Season; 2007–08 Late-Season Migratory Bird Hunting; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AV12

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2007–08 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2007–08 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by September 10, 2007.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, or fax comments to (703) 358–2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the April 11, 2007, **Federal Register** (72 FR 18328), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2007–08 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the April 11, 2007, proposed rule. As described in that document/proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include: (a) Harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation

of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 20–21, 2007, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2007–08 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced August 1–2, 2007, meetings reviewed information on the current status of waterfowl and developed recommendations for the 2007–08 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings were open to public observation and you may submit comments to the Director on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Overall, habitat conditions for breeding waterfowl in 2007 were similar or slightly improved relative to 2006. The total pond estimate (Prairie Canada and United States combined) was 7.0 ± 0.3 million ponds, 15 percent greater than last year's estimate of 6.1 ± 0.2 million ponds and 44 percent higher than the long-term average of 4.9 ± 0.03 million ponds. The 2007 estimate of ponds in Prairie Canada was 5.0 ± 0.3 million. This was a 13 percent increase from last year's estimate (4.4 ± 0.2 million), 49 percent above the 1955–2006 average (3.4 ± 0.03 million), and the fourth highest on record. The 2007 pond estimate for the northcentral United States (2.0 ± 0.1 million) was 19 percent greater than last year's estimate (1.6 ± 0.09 million) and 29 percent above the long-term average (1.5 ± 0.02 million). In the Eastern Survey Area (strata 51–72), the boreal forests were generally in good or excellent condition this spring, except for a few drier patches in Northern Quebec that were in fair condition.

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 41.2 ± 0.7 [SE] million birds. This was 14 percent greater than last year's estimate of 36.2 ± 0.6 million birds and 24 percent above the 1955–2006 long-term average. Mallard (*Anas platyrhynchos*) abundance was 8.3 ± 0.3 million birds, which was 14 percent above last year's estimate of 7.3 ± 0.2 million birds and 11 percent above the long-term average. Blue-winged teal (*A. discors*) estimated abundance was 6.7 ± 0.4 million birds, the third highest since 1955, 14 percent greater than last year's estimate of 5.9 ± 0.3 million birds, and 48 percent above the long-term average. Estimated abundances of gadwall (*A. strepera;* 3.4 ± 0.2 million) and Northern shovelers (*A. clypeata;* 4.6 ± 0.2 million) were also higher than those of last year (+19 percent and +24 percent, respectively) and well above their long-term averages (+96 percent and +106 percent, respectively). Estimated abundance of American wigeon (*A. americana;* 2.8 ± 0.2 million) was 29 percent greater than last year but similar to the long-term average. Estimated abundances of green-winged teal (*A. crecca;* 2.9 ± 0.2 million), redheads (*Aythya americana;* 1.0 ± 0.08 million), and canvasbacks (*A. valisineria;* 0.9 ± 0.09 million) were similar to last year's, but were each >50 percent above their long-term averages. Abundances of Northern shovelers, redheads, and canvasbacks were the highest ever estimated in this survey area, and the abundance of green-winged teal was the second highest estimated for this region. Estimates for Northern pintails (*Anas acuta;* 3.3 ± 0.2 million) and scaup (*Aythya affinis* and *A. marila* combined; 3.5 ± 0.2 million) were unchanged from those of 2006 and remained below long-term averages (−19 percent and −33 percent, respectively).

The eastern survey area was restratified in 2005, is now composed of strata 51–72, and efforts at integrating U.S. Fish and Wildlife Service and Canadian Wildlife Service surveys are ongoing. Estimated abundance of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca],* and surf [*M. perspicillata*]), green-winged teal, American wigeon, and buffleheads (*B. albeola*) were all similar to 2006 estimates and to long-term averages. American black duck (*A. rubripes,* 568,700 ducks) and ring-necked duck (*Aythya collaris,* 651,000 ducks) estimates were 14 percent and 19 percent higher than those of 2006, and 22 percent and 27 percent above their 1990–2006 averages, respectively. The merganser (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]) estimate of 400,100 was 27 percent higher than last year's, and the goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) count of 319,000 was 49 percent higher than that of 2006, but both these species were similar to their long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 9.1 ± 0.3 million. This is similar to the 2006 estimate of 7.9 ± 0.2 million. The projected mallard fall flight index was 11.4 ± 1.0 million, similar to the 2006 estimate of 9.9 ± 0.9 million birds. These indices were based on revised mid-continent mallard population models, and therefore, differ from those previously published.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In 2007, a large area of the eastern Canadian Arctic experienced a much colder than average spring. Delayed nesting activities and reduced production of waterfowl occurred widely from Queen Maud Gulf to northern Quebec, and will impact goose and swan populations migrating through the Continent's three eastern flyways. In contrast, waterfowl nesting in subarctic areas around Hudson and James Bays and Alaska's Yukon Delta experienced favorable nesting conditions. Primary abundance indices in 2007 increased from 2006 levels for 17 goose populations and decreased for 5 goose populations. Primary abundance indices in 2007 for both populations of tundra swans increased from 2006 levels. The following populations displayed significant positive trends during the most recent 10-year period ($P < 0.05$): Mississippi Flyway Giant, Atlantic, and Aleutian Canada geese; Western Arctic/Wrangel Island snow geese; and Pacific white-fronted geese. Only the Eastern Population of tundra swans showed a significant negative 10-year trend. The forecast for the production of geese and swans in North America in 2007 is regionally variable, but production for many populations will be reduced from the excellent production experienced in 2006.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The Central Platte River Valley, Nebraska, spring index for 2007, uncorrected for visibility bias, was 302,600 sandhill cranes. The photo-corrected, 3-year average for 2004–06 was 378,420, which is within the established population-objective range of 349,000–472,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2006–07. About 10,120 hunters participated in these seasons, which was similar to the number that participated in the previous year's season. Hunters harvested 17,631 MCP cranes in the U.S. portion of the Central Flyway during the 2006–07 seasons, which was 3 percent lower than the estimated harvest for the previous year. The retrieved harvest of MCP cranes in hunt areas outside the Central Flyway (Arizona, New Mexico, Alaska, Canada, and Mexico combined) was estimated at 13,048 during 2006–07. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 35,341 birds, which is 3 percent lower than the previous year's estimate. The long-term (1982–2004) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2006 pre-migration survey for the Rocky Mountain Population (RMP) was not completed due to engine problems with the survey aircraft. The 3-year average for 2003–05 was 19,633 sandhill cranes, which is within established population objectives of 17,000–21,000 for the RMP. Hunting seasons during 2006–07 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulted in a harvest of 907 RMP cranes, a 29 percent increase from the harvest of 702 the year before, and a record high harvest for this population.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data indicated that the numbers of displaying American woodcock in the Eastern Region in 2007 declined 11.6 percent from 2006; however, the Central Region was unchanged. We note that measurement of short-term (i.e., annual) trends tends to give estimates with larger variances and is more prone to be influenced by climatic factors that may affect local counts during the survey. For example, it is possible that the decrease observed in the Eastern Region this year may have been due in part to late season snowfalls that portions of the Northeast received after woodcock arrived on the breeding grounds.

There was no significant trend in woodcock heard in either the Eastern or Central Regions during 1997–2007. This represents the fourth consecutive year since 1992 that the 10-year trend estimate for either region did not indicate a significant decline. There were long-term (1968–2007) declines of 2.0 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection Survey data indicate that the 2006 recruitment index for the U.S. portion of the Eastern Region (1.5 immatures per adult female) was 7 percent lower than the 2005 index, and 8 percent lower than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.6 immatures per adult female) was 11 percent higher than the 2005 index, and 2 percent higher than the long-term average.

Band-Tailed Pigeons and Doves

A range-wide survey for the Pacific Coast Band-tailed Pigeon Population was initiated on an experimental basis in 2001 and became operational in 2004. Pigeons are counted at selected mineral sites throughout their range in British Columbia, Washington, Oregon, and California. Results are used as an index to determine the population trend over time. Range-wide trend estimates showed an increase in Pacific Coast pigeons during 2001–2006 of over 10 percent per year. Pigeon counts at more than half of mineral sites (54 percent) increased in 2006. In 2006, there were 44 sites counted.

Breeding Bird Survey (BBS) data are used to monitor the Interior Band-tailed Pigeon Population. Analyses of BBS data over the most recent 10 years (1997–2006) showed a significant decline while there was no trend indicated between 1968 and 2006. For the Pacific Coast Population, the preliminary 2005–06 harvest estimate from the Harvest Information Program (HIP) was 16,600 pigeons. For the Interior Population, the preliminary harvest estimate was 1,600 pigeons.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Units while the Central Unit showed a significant decline. Over the 42-year period, 1966–2007, all 3 units exhibited significant declines in mourning doves heard. In contrast, for doves seen over the 10-year period, no significant trends were found in any of the three Management Units. For doves seen over 42 years, no trend was found in the Eastern and Central Units while a significant decline was indicated for the Western Unit. The preliminary 2006 harvest estimate for the United States was 19,245,300 doves, a 13 percent decrease from 2005. A banding project is underway to obtain current information in order to develop mourning dove population models for each unit to provide guidance for improving our decisionmaking process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations. In Arizona, the white-winged dove population showed a significant decline between 1962 and 1980. To adjust

harvest with population size, the bag limits, season length, and shooting hours have been reduced over the years, most recently in 1988. These regulations changes appear to have slowed the decline, and in recent years, the harvest has stabilized at around 110,000 birds per year. Arizona is currently experiencing the greatest drought in recorded history. In 2007, the Call-count index was 24.6. According to HIP surveys, the 2006 harvest estimate was 107,400 doves.

In Texas, white-winged doves continue to expand their breeding range and are even extending into the northeast part of the State. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a dramatic increase in whitewing abundance. Moreover, because until recently, whitewing populations were not surveyed outside south Texas, the population increase has probably been even more dramatic. A new distance sampling protocol was implemented for Central and South Texas for 2007. It is anticipated that this protocol will be implemented Statewide in 2008, which should give the ability to obtain a good estimate of white-winged dove abundance in Texas. The 2007 data were not available at the time of this report. However, 2006 surveys in Central Texas indicated a population in this region of 991,103 to 1,394,300 whitewings. Preliminary harvest estimates suggest that, during the 2006–07 season, 2,165,128 white-winged doves were harvested Statewide. This includes approximately 278,000 whitewings harvested during the special white-winged dove season in the Special White-winged Dove Zone, and approximately 319,000 white-wings harvested during the same period outside the Special Zone. Total Statewide harvest represents a slight, but not necessarily significant, change from the previous season of 1,840,536 whitewings.

In California, BBS data indicate that there has been a significant increase in the population between 1968 and 2006 while no trend was indicated over the most recent 10 years. According to HIP surveys, the preliminary harvest estimate for 2006 was 55,200. In New Mexico, both the long- and short-term trends show a significant increase. In 2006, the estimated harvest was 66,100 doves.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. White-winged dove distance sampling in the Valley included white-tipped doves for the first time in 2007. However, these data were not available at the time of this report. Once available, they should provide, for the first time, an estimate of actual white-tipped dove abundance in Texas. During the 2006–07 season, an estimated total of 150,521 white-tipped doves were killed in Texas. This is essentially unchanged from the 2005–06 estimate of 144,302 doves.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2007–08 hunting season, we received requests from 28 Tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. Because of the timing of this proposed rule, a final rule will be published in the **Federal Register** in mid-September 2007 that will include tribal regulations for the early- and late-hunting seasons. Early seasons generally begins around September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. Late seasons generally begin on or around September 24 and most commonly include waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 23, 2007 (72 FR 40194); early-season final frameworks will be published in late-August. Proposed late-season frameworks for waterfowl and coots will be published in late-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 28 Tribes that have submitted proposals that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2007–08 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2007. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 10, 2007, and close December 24, 2007. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit after the first day of the season. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 13, 2007, and run until January 27, 2008. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 20, 2007, through January 27, 2008. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribe conducted a detailed assessment of dove hunting.

Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2007–08 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2007, through March 9, 2008. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2007–08 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

The Tribe requests a duck and merganser season of October 2 to December 14, 2007, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), two redheads, two wood ducks, one pintail, one canvasback, and three scaup. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15.

For Canada geese, the Tribe proposes an October 16, 2007, to January 18, 2008, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 25 to December 19, 2007, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 24 to December 29, 2007, season with a daily bag limit of 20.

Similar to the last several years, the Tribe also requests a sandhill crane season from September 11 to October 17, 2007, with a daily bag limit of three.

In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year, and, as such, the Tribe would expect similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been fewer than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

The Service proposes to approve the request for special migratory bird hunting regulations for the Crow Creek Sioux Tribe. We remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 29, 2007, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2007–08 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 15 to December 3, 2007, season on ducks, mergansers, coots, and moorhens, and a September 1 to December 3, 2007, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 3, 2007, season. The band proposes a September 1 to October 30, 2007, season for mourning doves. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 6 scaup, 4 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

Mourning dove: 30 mourning dove.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and

other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2007–08 season, the Tribe requests that the tribal member duck season run from September 22, 2007, through January 21, 2008. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through November 30, 2007, and a January 1 through February 8, 2008, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2007, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2007, season. The daily bag limit will not exceed five birds. For mourning doves, snipe and rails, the Tribe proposes a September 1 through November 14, 2007, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2006–07 hunting season indicated that approximately 15 tribal hunters harvested an estimated 112 ducks and 50 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2007–08 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although Wisconsin has raised concerns in the past and Michigan now annually raises objections. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian hunting rights decided in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin.

Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

For 2007, the GLIFWC proposed off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; and the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2007 proposal is generally similar to last year's regulations, except that it includes increased bag limits for most species in the 1836, 1837, and 1842 Treaty Areas; eliminates all species restrictions within the bag limit for ducks; lengthens season dates for all species except mourning doves and woodcock, from September 15–December 1 to September 1–December 31; and extends hunting hours until 15 minutes after sunset. More specifically, the proposal includes increasing the daily bag limit for ducks, in the 1837 and 1842 Treaty Areas, and geese, and mergansers in the 1836, 1837 and 1842 Treaty Areas to 40, 20, and 10 birds, respectively (from 20, 10, and 5 birds in 2006, respectively). The proposal includes increasing the daily bag limits for ducks in the 1836 Treaty Area to 20 (from 10 birds in 2006). The proposal maintains the daily bag limit for snipe, woodcock, and mourning doves (for mourning dove this applies only in the 1837 and 1842 Treaty Areas) of 16, 10, and 15 birds, respectively, similar to last year, in the 1836, 1837, and 1842 Treaty Areas.

Under the GLIFWC proposed regulations, GLIFWC expects total ceded

territory harvest to increase by no more than 500 ducks and 150 geese for the following reasons:

(1) Additional hunting in December is likely to have little impact on harvest levels, due to the high likelihood of ice-up over most of the ceded territory during this period.

(2) A September 1 opening date for ducks will likely result in a very modest increase in harvest, as hunting pressure remains concentrated to the period when additional migrant birds are present;

(3) Increases in daily bag limits are likely to affect only a very small number of hunters, since higher daily bags are realized only on very rare occasions;

(4) Removal of species restrictions may lead to a modest increase in harvest, however, removal of these restrictions will help stem the loss of the waterfowl hunting tradition among individuals who fear inadvertently violating species restrictions; and

(5) Extension of hunting hours will make waterfowl hunting hours consistent with most other tribal hunting hours. Concern about species identification under somewhat lower light conditions is addressed by removing species restrictions in the daily bag limits.

Given these factors, the Tribe expects harvest would likely remain below 5,000 ducks and 1,000 geese, which is similar to anticipated levels in previous years.

Recent GLIFWC harvest surveys (1996–98, 2001, and 2004) indicate that tribal off-reservation waterfowl harvest has averaged less than 1,000 ducks and 120 geese annually. In the latest survey year (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Further, in the last 5 years of harvest surveys, only one hunter reported harvesting 20 ducks in a single day. Analysis of hunter survey data over the period in question (1996–2004) indicates a general downward trend in both harvest and hunter participation.

While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that the GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2007 season is the best plan for increasing tribal participation. More specific discussion follows below.

Overall Daily Bag Limit for Waterfowl

Based on the current proposal, GLIFWC is estimating a relatively small additional duck harvest (1000 to 1500). However, it is possible that hunter participation could increase beyond their estimates and could result in a conservation impact, particularly on locally-breeding populations, such as wood ducks and mallards. Further, based on the GLIFWC's own harvest data, present daily bag limits do not appear to be a hindrance or limiting factor for Tribal harvest, and increasing the daily bag limit to 40 ducks would be far in excess (more than double) of anything we currently have experience with regarding tribal migratory bird hunting regulations. Until we have additional information on which we could assess potential impacts, we do not favor increasing daily bag limits for ducks to the extent GLIFWC has proposed. In an effort to obtain the necessary information, we are willing to allow a pilot expansion of the daily bag limit to 30 birds per day in the 1837 and 1842 Treaty Areas. We are proposing this with the understanding that we will need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters.

We do support the proposals for increasing the daily bag limits for ducks in the 1836 Treaty Area to bring them more in line with our proposed GLIFWC daily bag limits for ducks in the 1837 and 1842 Treaty Areas. Further, we also support the proposals for increasing the daily bag limits for geese in the 1837, 1842, and 1836 Treaty Areas. Given the limited goose harvest and the Flyway-wide effort to increase the harvest of resident Canada geese, we see no potential conservation impacts with this part of the proposal.

Removal of Species Restrictions

We have several concerns with GLIFWC's proposal for removal of all species restrictions within the overall duck daily bag limits in the 1837, 1842, and 1836 Treaty Areas. We have a number of duck species that are showing long term downward population trends (scaup, pintails, and black ducks), and others for which an increased daily bag limit of 30 birds per day could potentially have conservation impacts (canvasbacks), particularly on locally-breeding ducks (mallards and wood ducks). Overharvest of these species in localized areas due to removal of species restrictions could contribute to long term declines. Removal of species restrictions on these species would be inconsistent with our current conservation concerns. Thus, we propose the following species restrictions within the overall daily bag limit in all three of the Treaty Areas: 10 mallards (only 5 of which may be hens), 5 black ducks, 5 scaup, 5 pintails, 5 wood ducks, and 5 canvasbacks. We believe these species restrictions are commensurate with the individual species' population status.

Expanded Season Dates

Generally, we have tried to limit the opening date of tribal duck seasons to around September 15 for a number of reasons. Foremost among those reasons is that opening the tribal season 2–3 weeks ahead of a State's normal season has the potential to impact locally-breeding ducks. In the 1836, 1837 and 1842 Treaty Areas, we believe mallards and wood ducks would be the most susceptible to potential impacts of early September hunting. Birds are naive to the gun at this time prior to the opening of the general gun season and that could increase the potential for large harvests of resident breeding birds. Thus, we believe that expanding early September duck hunting in the 1836, 1837 and 1842 Treaty Areas would not be in the best interest of the resource. However, we have less concern about allowing the extension on the end of the season for the month of December and support this portion of their proposal. In most instances, many waterfowl will have already migrated.

Expanded Shooting Hours

Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. A number of reasons and concerns have been cited for extending shooting hours past sunset. Potential impacts to some locally breeding populations (e.g., wood ducks), hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the normal concerns raised when discussing potential expansions of shooting hours. However, despite these concerns, we support the proposal for expanding the shooting hours by 15 minutes after sunset in the 1837, 1842, and 1836 Treaty Areas. We have previously supported this in other tribal areas and have not been made aware of any wide-scale problems. Further, we believe the continuation of a specific species restriction within the daily bag limit for mallards, and the implementation of a species restriction within the daily bag limit for wood ducks, will allay potential conservation concerns for these species. We realize that this proposal, when implemented with all the other proposed changes in GLIFWC's tribal seasons, could have conservation impacts. Thus, we are supporting this with the understanding that we will need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or

GLIFWC's assisting the Service to survey tribal hunters.

Summary

In summary, given the above information, we believe that the regulations advanced by the GLIFWC for the 2007–08 hunting season are not in the best interests of the migratory bird resource. However, we propose the approval of an increased bag limit for ducks in the 1836 Treaty Area; increased bag limits for geese in the 1836, 1837, and 1842 Treaty Areas; lengthened season dates for all species except mourning doves and woodcock, from December 1–December 31; and extended hunting hours until 15 minutes after sunset. In addition, we propose a pilot bag limit increase for ducks in the 1837 and 1842 Treaty Areas. As we stated last year (71 FR 55076, September 20, 2006), we are willing to meet with the GLIFWC to explore possible ways to increase tribal participation in migratory bird hunting opportunities. Further, we appreciate the opportunity we had to meet with the Tribes last winter to discuss the mutual concerns we have for the migratory bird resource and future hunting opportunities. We note that GLIFWC's proposal this year clearly responds to some of the important concerns we expressed at that time.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The proposed 2007–08 waterfowl hunting season regulations for GLIFWC are as follows:

Ducks:

A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 30 ducks, including no more than 10 mallards (only 5 of which may be hens), 5 black ducks, 5 scaup, 5 pintails, 5 wood ducks, and 5 canvasbacks.

B. Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 5 black ducks, 5 scaup, 5 pintails, 5 wood ducks, and 5 canvasbacks.

Mergansers: All Ceded Areas:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 10 mergansers.

Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 31, 2007. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds:

A. Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 1 and end December 31, 2007.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails:

Season Dates: Begin September 1 and end December 31, 2007.

Daily Bag Limit: 20, singly or in the aggregate.

C. Common Snipe:

Season Dates: Begin September 15 and end December 1, 2007.

Daily Bag Limit: 16 common.

D. Woodcock:

Season Dates: Begin September 5 and end December 1, 2007.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end October 30, 2007.

Daily Bag Limit: 15.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective sections 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2007–08 waterfowl and Canada goose season beginning with the earliest possible opening date in the Pacific Flyway States, October 13, 2007, and a closing date of November 30, 2007. Daily bag and possession limits for waterfowl

would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2006–07 season, estimated duck harvest was 496, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 1 percent of the total harvest in 2006. The estimated harvest of geese was 9 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2007–08 waterfowl harvest would be around 300–400 ducks and 10–25 geese.

We propose to approve the Tribe's requested 2007–08 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2007–08 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters, the Tribe requests that the season for ducks begin September 22, 2007, and end January 31, 2008. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 16, 2007, and from October 1, 2007, to January 31, 2008. Total number of days would not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2006–07 nontribal harvest of 70 ducks. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2007, through January 31, 2008. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2007–08 season, the Tribe requests proposed season dates of October 1, 2007, through January 28, 2008. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2007–08 special migratory bird hunting regulations.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2007–08 season, the Tribe requests a duck season starting on September 22 and ending December 31, 2007, and a goose season to run from September 1 through December 31, 2007. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 500–1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

(k) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee,

and Wexford Counties. The Band proposes the following regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

For the 2007–08 season, the Little River Band of Ottawa Indians proposes a duck and merganser season from September 15, 2007, through January 20, 2008. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black duck, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe proposes a September 20 through November 30, 2007, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe proposes a September 1, 2007, through February 8, 2008, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe proposes a September 1 to November 14, 2007, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitored harvest through mail surveys. General Conditions were as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2007–08 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians' special migratory bird hunting seasons.

(l) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2007–08 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. The tribal member duck, merganser, coot, and gallinule season would run from September 15, 2007, through January 20, 2008. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1, 2007, through February 8, 2008, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 1 through November 30, 2007, season. The daily bag limit for Canada geese would be 5 birds, and for snow geese, brant, and white-fronted geese, 10 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2007, to November 14, 2007, season. The daily bag limit will not exceed five birds. For snipe, mourning doves, and sora rail, the Tribe proposes a September 1 to November 14, 2007, season. The daily bag limit will not exceed 10 birds per species. The possession limit will not exceed two days' bag limit for all birds. All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2007–08 special migratory bird hunting regulations.

(m) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers-taken lands. For the 2007–08 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2007–08 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the liberal regulatory alternative in the High Plains Management Unit for this season. The Tribe proposes a season from October 13, 2007, through January 17, 2008. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, and one mottled duck. The canvasback season for nontribal hunters is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed nontribal member Canada goose season would run from October 27, 2007, through February 10, 2008 (107 day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 13, 2007, through December 23, 2007, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 13, 2007, through January 13, 2008, and February 26 through March 10, 2008. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 22, 2007, through March 10, 2008. The daily bag limit would be five birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback,

two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed Canada goose season for tribal members would run from October 13, 2007, through March 10, 2008, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 6, 2007, through March 10, 2008, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 13, 2007, through March 10, 2008. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2006–07 season, hunters harvested an estimated 1,886 geese and 929 ducks. In the 2006–07 season, duck harvest species composition was primarily mallard (85 percent), gadwall (6 percent), green-winged teal (2 percent), blue-winged teal (1 percent), and wigeon (4 percent).

Goose harvest species composition in 2006–07 at Mni Sho Sho was approximately 90 percent Canada geese, 8 percent snow geese, and 2 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 97 percent Canada geese and 3 percent snow geese.

The Tribe anticipates a duck harvest similar to those of the previous three years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the Tribe's requested regulations for the Lower Brule Reservation.

(n) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2007–08 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2007–08 season, the Lower Elwha Klallam Tribe requests a duck and coot season from September 22, 2007, to December 30, 2007. The daily bag limit will be seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 22, 2007, to December 30, 2007. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe proposes a season from November 1, 2007, to February 15, 2008, with a daily bag limit of two. The possession limit will be twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 22, 2007, to December 30, 2007, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 50 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 22, 2007, to January 20, 2008. The daily bag limit is seven ducks, including no more than one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe proposes the season open on September 22, 2007, and close January 20, 2008. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese.

For band-tailed pigeons, the Tribe proposes the season open September 1, 2007, and close October 31, 2007. The daily bag limit for band-tailed pigeons is two.

The Tribe anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2007–08 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; and

(6) The use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribe's requested 2007–08 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2007–08 season, the Navajo Nation requests special migratory bird hunting regulations on the reservation for both tribal and nontribal hunters for the 2007–08 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through September 30, 2007, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe anticipates a total harvest of fewer than 500 mourning doves; 20 band-tailed pigeons; 1,000 ducks, coots, and mergansers; and 1,000 Canada geese for the 2007–08 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's special migratory bird season.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a April 27, 2007, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 22 through December 9, 2007, with a closed segment of November 17 to 25, 2007. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2007, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The Tribe will close the season November 17 to 25, 2007. If a quota of 300 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 8 and November 11, 2007, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 11, 2007, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells. Tribal member shooting hours will be from one-half hour before sunset to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2007–08 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2007–08 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under final Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as last year, the season would have an opening date of October 7, 2007, and a closing date of January 19, 2008. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 7, 2007, and a closing date of January 19, 2008. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho

under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 7, 2007, and a closing date of January 19, 2008.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2007–08 hunting season.

(s) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005, and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2007–08 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2007, to December 31, 2007. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2007, to December 31, 2007. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2007, to February 15, 2008, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2007, to December 31, 2007, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

(t) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2007–08 season, the Tribe requests to establish duck and coot seasons that would run from September 1, 2007, through January 15, 2008. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots, the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2007, and end on January 15, 2008. The daily bag limit for snipe is eight. For band-tailed pigeon, the Tribe proposes the season start on September 1, 2007, and end on December 31, 2007. The daily bag limit is five. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 15, 2007, and ending on January 15, 2008. The daily bag limit for geese is four, including no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. For brant, the Tribe proposes the season start on September 1, 2007, and end on December 31, 2007. The daily bag limit for brant is two. The possession limit is twice the daily bag limit.

We propose to approve the Squaxin Island Tribe's requested 2007–08 special migratory bird hunting regulations.

(u) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2007, to February 15, 2008. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. For geese, the daily bag limit is six. Possession limits are totals of two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2007, to January 31, 2008. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is 10. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(v) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian Tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2007–08 season, the Tribe requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish Tribe requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above mentioned species beginning on the earliest possible opening date and closing March 9, 2008. The Swinomish manage harvest by a report card and permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribe's requested 2007–08 special migratory bird hunting regulations.

(w) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2007–08 season, the Tribe proposes tribal and nontribal hunting regulations for the 2007–08 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 15, 2007, through February 29, 2008. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 18, respectively. Nontribal hunters should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 15, 2007, through February 29, 2008. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese annually.

We propose approval of the Tulalip Tribe's request to have a special season. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(x) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal members only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2007–08 season, the Tribe requests a duck season starting October 1, 2007, and ending February 15, 2008. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 15, 2007, and ending February 15, 2008. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 15, 2007, to February 15, 2008, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are 10 and 7, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2007, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the Tribe closely monitor harvest of this special migratory bird hunting season.

(y) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2007–08 season, the Tribe proposes a duck season of October 31, 2007, through February 27, 2008. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, six drake mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and four of all other species not listed. The season for harlequins would be closed. The Tribe proposes a teal (green-winged and blue) season of October 15, 2007, through January 28, 2008. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 15, 2007, and February 29, 2008, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the Tribe requests a season between September 10 to September 24, 2007, and October 31, 2007, through February 27, 2008, with a daily bag limit of 5 Canada geese during the first period, 3 Canada geese during the second period, and a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 15 and November 30, 2007, with a daily bag limit of three.

The Tribe currently has 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Hunters will be required to register with the Harvest Information Program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head.

(z) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2007–08 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck and merganser season to start September 15 and end December 16, 2007. For ducks, they request a daily bag limit of 10, including no more than 2 mallards and 1 canvasback. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 through September 28, 2007, and a late season from September 29, 2007, through December 16, 2007. The early season daily bag limit is eight geese and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 1 through November 30, 2007, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season.

(aa) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: The length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2007–08 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2007–08 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 14, 2007, and a closing date of January 28, 2008. The Tribe proposes a separate canvasback season, with an opening date of October 14, 2007, and a closing date of December 10, 2007. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail, one canvasback (when open), and seven mallards (including no more than two hen mallards). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe is proposing a season from October 14, 2007, through January 28, 2008. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 15, 2007, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the Tribe for the 2007–08 season.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 17, 2007, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2007–08 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 2007, and running for the maximum amount of days allowed under the final Federal frameworks. The Tribe indicated that if the Service decided to close the canvasback season, the Tribe would close theirs; otherwise, the canvasback season would start October 9, 2007, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (when open), 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe has requested a dark goose (Canada geese, brant, white-fronts) season starting October 29, 2007, and closing January 31, 2008. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2007, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five tribal members harvested fewer than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2007–08 hunting season.

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.** Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected Tribes to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received during the comment period. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, 4501 North Fairfax Drive, Arlington, VA 22203. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, we prepared an August 1985 Environmental Assessment (EA) entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands.'' Annual NEPA considerations are covered under a separate Environmental Assessment (EA), ''Duck Hunting Regulations for 2007–08,'' and an August 2007, Finding of No Significant Impact (FONSI). Copies of the 1985 EA, the annual EA, and FONSI are available upon request from the address indicated under **ADDRESSES.**

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **ADDRESSES** or by viewing on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Prior to issuance of the 2007–08 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter, the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990 through 1996, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004

analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. Lastly, OMB has approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124 (expires 1/31/2010). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more

restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2007, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal hunters may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2007–08 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: August 22, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–4235 Filed 8–30–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AV12

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2007–08 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 10, 2007.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2007

On April 11, 2007, we published in the **Federal Register** (72 FR 18328) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, proposed regulatory alternatives for the 2007–08 duck hunting season, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2007–08 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 11 proposed rule.

On June 8, 2007, we published in the **Federal Register** (72 FR 31789) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations and the regulatory alternatives for the 2007–08 duck hunting season. The June 8 supplement also provided detailed information on the 2007–08 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 20 and 21, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2007–08 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2007–08 regular waterfowl seasons. On July 23, 2007, we published in the **Federal Register** (72 FR 40194) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August, we will publish a

rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2007–08 season.

On August 1–2, 2007, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2007–08 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through August 3, 2007, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or around September 20, 2007.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the north central United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Overall, habitat conditions for breeding waterfowl in 2007 were similar or slightly improved relative to 2006. The total pond estimate (Prairie Canada and United States combined) was 7.0 ± 0.3 million ponds, 15 percent greater than last year's estimate of 6.1 ± 0.2 million ponds and 44 percent higher than the long-term average of 4.9 ± 0.03 million ponds. The 2007 estimate of ponds in Prairie Canada was 5.0 ± 0.3 million. This was a 13 percent increase from last year's estimate (4.4 ± 0.2 million), 49 percent above the 1955–2006 average (3.4 ± 0.03 million), and the fourth highest on record. The 2007 pond estimate for the northcentral United States (2.0 ± 0.1 million) was 19 percent greater than last year's estimate (1.6 ± 0.09 million) and 29 percent above the long-term average (1.5 ± 0.02 million).

In the Eastern Survey Area (strata 51–72), the boreal forests were generally in good or excellent condition this spring, except for a few drier patches in Northern Quebec that were in fair condition.

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 41.2 ± 0.7 [SE] million birds. This was 14 percent greater than last year's estimate of 36.2 ± 0.6 million birds and 24 percent above the 1955–2006 long-term average. Mallard (*Anas platyrhynchos*) abundance was 8.3 ± 0.3 million birds, which was 14 percent above last year's estimate of 7.3 ± 0.2 million birds and 11 percent above the long-term average. Blue-winged teal (*A. discors*) estimated abundance was 6.7 ± 0.4 million birds, the third highest since 1955, 14 percent greater than last year's estimate of 5.9 ± 0.3 million birds, and 48 percent above the long-term average. Estimated abundances of gadwall (*A. strepera;* 3.4 ± 0.2 million) and Northern shovelers (*A. clypeata;* 4.6 ± 0.2 million) were also higher than those of last year (+19 percent and +24 percent, respectively) and well above their long-term averages (+96 percent and +106 percent, respectively). Estimated abundance of American wigeon (*A. americana;* 2.8 ± 0.2 million) was 29 percent greater than last year but similar to the long-term average. Estimated abundances of green-winged teal (*A. crecca;* 2.9 ± 0.2 million), redheads (*Aythya americana;* 1.0 ± 0.08 million), and canvasbacks (*A. valisineria;* 0.9 ± 0.09 million) were similar to last year's, but were each >50 percent above their long-term averages. Abundances of Northern shovelers, redheads, and canvasbacks were the highest ever estimated in this survey area, and the abundance of green-winged teal was the second highest estimated for this region. Estimates for Northern pintails *(Anas acuta;* 3.3 ± 0.2 million) and scaup *(Aythya affinis* and *A. marila* combined; 3.5 ± 0.2 million) were unchanged from those of 2006, and remained below long-term averages (−19 percent and −33 percent, respectively).

The eastern survey area was restratified in 2005, is now composed of strata 51–72, and efforts at integrating U.S. Fish and Wildlife Service and Canadian Wildlife Service surveys are ongoing. Estimated abundance of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, and buffleheads (*B. albeola*) were all similar to 2006 estimates and to long-term averages. American black duck (*A. rubripes*, 568,700 ducks) and ring-necked duck (*Aythya collaris*, 651,000 ducks) estimates were 14 percent and 19 percent higher than those of 2006, and 22 percent and 27 percent above their 1990–2006 averages, respectively. The merganser (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]) estimate of 400,100 was 27 percent higher than last year's, and the goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) count of 319,000 was 49 percent higher than that of 2006, but both these species were similar to their long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 9.1 ± 0.3 million. This is similar to the 2006 estimate of 7.9 ± 0.2 million. The projected mallard fall flight index was 11.4 ± 1.0 million, similar to the 2006 estimate of 9.9 ± 0.9 million birds. These indices were based on revised mid-continent mallard population models, and therefore, differ from those previously published.

See section 1.A. Harvest Strategy Considerations for further discussion of the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In 2007, a large area of the eastern Canadian Arctic experienced a much colder than average spring. Delayed nesting activities and reduced production of waterfowl occurred

widely from Queen Maud Gulf to northern Quebec, and will impact goose and swan populations migrating through the Continent's three eastern Flyways. In contrast, waterfowl nesting in subarctic areas around Hudson and James Bays and Alaska's Yukon Delta experienced favorable nesting conditions. Primary abundance indices in 2007 increased from 2006 levels for 17 goose populations and decreased for 5 goose populations. Primary abundance indices in 2007 for both populations of tundra swans increased from 2006 levels. The following populations displayed significant positive trends during the most recent 10-year period ($p < 0.05$): Mississippi Flyway Giant, Atlantic, and Aleutian Canada geese; Western Arctic/Wrangel Island snow geese; and Pacific white-fronted geese. Only the Eastern Population of tundra swans showed a significant negative 10-year trend. The forecast for the production of geese and swans in North America in 2007 is regionally variable, but production for many populations will be reduced from the excellent production experienced in 2006.

Waterfowl Harvest and Hunter Activity

During the 2006–07 hunting season, U.S. hunters harvested 13,808,100 ducks, compared to 12,510,800 in 2005–06, and they harvested 3,579,100 geese, compared to 3,660,700 geese taken in 2005–06. The five most commonly harvested duck species were mallard (4,668,411), green-winged teal (1,658,727), gadwall (1,544,792), wood duck (1,076,200), and blue-winged/cinnamon teal (940,965).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 11, 2007, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 8, 2007, **Federal Register**, discussed the regulatory alternatives for the 2007–08 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 11 and June 8 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 11 and June 8, 2007, **Federal Register** documents.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative.

The Central Flyway Council also recommended the ''liberal'' alternative. However, as part of their Hunter's Choice experiment, they recommended continuation of the following bag limits:

In Colorado, Montana, Nebraska, New Mexico, and Oklahoma, the daily bag limit would be six ducks, with species and sex restrictions as follows: five mallards (no more than two of which may be females), two redheads, two scaup, two wood ducks, one pintail, one mottled duck, and one canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

In Kansas, North Dakota, South Dakota, Texas, and Wyoming, the daily bag limit would be five ducks, with species and sex restrictions as follows: two scaup, two redheads, and two wood ducks, and only one from the following group—hen mallards, mottled ducks, pintails, and canvasbacks.

Service Response: We are continuing development of an Adaptive Harvest Management (AHM) protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. For the 2007 hunting season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards. Investigations of the dynamics of western mallards (and their potential effect on regulations in the West) are continuing; therefore, we are not yet prepared to recommend an AHM protocol for this mallard stock.

For the 2007 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, we agreed in 2003 to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus Minnesota, Michigan, and Wisconsin) is ≥ 5.5 million.

Optimal AHM strategies for the 2007 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2007 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 9.05 million midcontinent mallards (traditional survey area plus MN, WI, and MI), 5.04 million ponds in Prairie Canada, and 906,900 eastern mallards, we believe the appropriate regulatory choice for all four Flyways is the ''liberal'' alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and propose to adopt the ''liberal'' regulatory alternative, as described in the June 8 **Federal Register**.

Regarding Hunter's Choice, we support continuation of the Central Flyway Council's recommendation for a 3-year evaluation of the Central Flyway's Hunter's Choice duck bag limit. The Central Flyway's Hunter's Choice regulations are intended to limit harvest on pintails and canvasbacks in a manner similar to the season-within-a-season regulations. Hunter's Choice regulations should also reduce harvests of mottled ducks and hen mallards, while maintaining full hunting opportunity on abundant species such as drake mallards. For the species included in the aggregate bag limit, the harvest of one species is intended to

''buffer'' the harvest of the others, thus reducing the harvest of all species included in the one-bird category. The Central Flyway has accumulated 4 years of baseline information on harvests resulting from ''season-within-a-season'' regulations in the Central Flyway; the season length for pintails and canvasbacks in season-within-a-season States under the ''liberal'' alternative will be 39 days.

Five States (Kansas, North Dakota, South Dakota, Texas, and Wyoming) were randomly assigned to Hunter's Choice regulations and the remaining five States (Colorado, Montana, Nebraska, New Mexico, and Oklahoma) serve as controls (season-within-a-season regulations) as the evaluation proceeds. The overall duck daily bag limit is reduced from six to five for the Hunter's Choice States.

While we continue to support the Central Flyway's Hunter's Choice experiment, we reiterate that we believe implementation of this experiment should not preclude any future changes in hunting regulations that may be deemed necessary on an annual basis for any other duck species in the Central Flyway, if such changes are deemed necessary.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that black duck harvest regulations remain unchanged for the 2007–08 season.

Service Response: For the 2007–08 hunting season, we support the Flyway Councils' recommendations for no change in hunting regulations for black ducks. However, we are disappointed that progress towards development of an international harvest strategy stalled during recent discussions with the Atlantic and Mississippi Flyways. It is our understanding that a number of key points were debated, but consensus could not be reached on two major issues: a suitable harvest rate objective and equitable allocation of the harvest between Canada and the United States. It remains our objective to reach final agreement on the international harvest strategy in time to inform decisions for the 2008–09 regulatory cycle. To do so, we will provide a facilitated forum, involving representatives from the Service, the Canadian Wildlife Service, and the Atlantic and Mississippi Flyways, to reach consensus on the parity issue and any other remaining issues that currently stand in the way of completing and implementing this revised approach to black duck harvest management. Failure to reach agreement in time for next year's regulations development cycle will result in the Service using the best available information to recommend regulations necessary to bring harvests in line with the harvest potential of black ducks.

iv. Canvasbacks

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for canvasbacks consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, and 107-day season in the Pacific Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for canvasbacks with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide.

This year's spring survey resulted in a record high estimate of 865,000 canvasbacks. This was 25 percent above the 2006 estimate of 691,000 canvasbacks and 53 percent above the 1955–2006 average. The estimate of ponds in Prairie Canada was 5.04 million, which was 13 percent above last year and 49 percent above the long-term average. The size of the spring population, together with above-average expected production due to the good habitat conditions results in an allowable harvest in the United States is 467,900 birds for the 2007–08 season. The expected canvasback harvest with a 1-bird daily bag limit for the entire season is expected to be about 120,000 birds. Available data indicates that adding a second canvasback to the daily bag limit is expected to increase harvest about 25 percent, or to approximately 150,000 birds in the United States. The current harvest strategy has no provisions for daily bag limits greater than one bird. However, with the record high breeding population recorded this spring and the expected good recruitment, the strategy would project population growth even with a 2-bird daily bag limit. Therefore, we are in support of the Atlantic, Mississippi, and Pacific Flyway Councils' recommendations to increase the daily bag limit for canvasbacks to two birds for the 2007–08 season. We also support the Central Flyway Council's recommendation to leave canvasback limits unchanged in the Central Flyway to allow continuation of the hunter's choice experiment in that Flyway.

We continue to support the canvasback harvest strategy and the model adopted in 1994. However, this strategy was developed primarily due to concerns about low population levels, and as such, did not address circumstances encountered this year of record high abundance and the potential for increased daily bag limits. We believe there is reasonable opportunity to allow a limited increase in the daily bag limit this year without compromising the population's ability to sustain a breeding population in excess of 500,000 canvasbacks next spring.

We note, however, that departures from existing harvest strategies are not actions that we generally condone nor will we make an exception in the case of the canvasback strategy next year, even if similar circumstances exist without an explicit modification to the existing strategy allowing for daily bag limits greater than one bird. Over the next year, we are willing to discuss the possibility of revising the strategy with the Flyway Councils and other interested parties. Because the population model has performed relatively well to date, we believe that the most productive area for discussion involves examination of the harvest management objectives of this strategy, with an emphasis on allowing bag limits greater than one bird. We believe that such a revision should carefully consider the potential ramifications of such changes on the expected frequency of closed and partial seasons for this species in the future.

Due to relative lateness of this development, the generally earlier opening of duck seasons in Alaska (September 1), and the anticipated level of harvest in Alaska, we propose to exclude Alaska from the proposed increase in the daily bag limit this year, as was recommended by the Pacific Flyway Council, with the State of

Alaska's concurrence. However, we believe that Alaska should fully engage in review of population objectives and remain a part of the overall harvest strategy for this species. Additionally, explicit provisions for Alaska should be considered in any proposed modifications to the strategy that might be forthcoming from the Flyways for the next regulatory cycle.

v. Pintails

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, and a 107-day season in the Pacific Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for pintails with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

Service Response: In the July 23 **Federal Register**, we approved the incorporation of a compensatory harvest mortality model into the decision-making framework used in the pintail harvest strategy. Within that framework, the compensatory model serves as an alternative hypothesis regarding the effect of harvest mortality on population growth. The two alternative models have been assigned weights based on their respective abilities to predict historic pintail breeding populations. These weights, representing the current strength of evidence favoring each model, determine the influence each model has on the annual regulatory choice for pintails. A document describing the current pintail harvest strategy with these technical improvements is posted on the Service's Web page (*http://www.fws.gov/migratorybirds/reports/reports.html*).

Based on this revised strategy, along with an observed spring breeding population of 3.34 million, an overflight-bias-corrected breeding population of 4.34 million and a projected fall flight of 5.29 million pintails, the Pintail Harvest Strategy prescribes a full season and a 1-bird bag in all Flyways. Under the ''liberal'' season length, this regulation is expected to result in a harvest of 569,000 pintails and an observed breeding population estimate of 3.24 million in 2008, not considering any potential effect from continuation of the Hunter's Choice evaluation in the Central Flyway.

Furthermore, we agree with the Central Flyway Council's recommendation to adopt a 39-day ''season-within-a-season'' for pintails in Colorado, Montana, Nebraska, New Mexico, and Oklahoma. We understand that this departure from the pintail strategy is a necessary part of the experimental ''Hunter's Choice'' season.

vi. Scaup

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no changes in scaup harvest regulations for 2007. All the Flyway Councils reiterated their support for the cooperative development of a comprehensive scaup harvest management strategy.

Service Response: The continental scaup (greater *Aythya marila* and lesser *Aythya affinis* combined) population has experienced a long-term decline over the past 20 years. Over the past several years in particular, we have continued to express our growing concern about the status of scaup. The 2007 breeding population estimate for scaup is 3.45 million, essentially unchanged from the 2006 estimate, and the third lowest estimate on record.

Last year, we stated that we did not change scaup harvest regulations with the firm understanding that a draft harvest strategy would be available for Flyway Council review prior to the winter meetings (71 FR 55654, September 22, 2006) and be in place to guide development of scaup hunting regulations in 2007. As part of this effort, we developed an assessment framework that uses available data to help predict the effects of harvest and other uncontrollable environmental factors on the scaup population. After extensive review that we believe resulted in substantial improvements, the final technical assessment was presented during the Winter Flyway Technical Section meetings and made available for public review in the April 11 **Federal Register**. We stated then, and continue to believe, that this technical assessment represents an objective and comprehensive synthesis of data relevant to scaup harvest management and can help frame a scientifically-sound scaup harvest strategy. We note that results of the assessment suggest that a reduction in scaup harvest is commensurate with the current population status of scaup. Based on this technical assessment, a proposed scaup harvest strategy was made available for public review in the June 8 **Federal Register**. The proposed harvest strategy included initial Service recommendations on a harvest management objective and proposed Flyway-specific harvest allocations, as well as an additional analysis that predicted scaup harvest from various combinations of Flyway-specific season lengths and bag limits (*http://www.fws.gov/migratorybirds/reports/reports.html*). A number of concerns about the proposed strategy were raised by the Flyway Councils and States.

In the July 23 **Federal Register**, we addressed these concerns and stated that while we continue to support the technical assessment of scaup harvest potential, we were sensitive to the concerns expressed by the Flyway Councils about the policy and social aspects of implementation of the proposed strategy at this time. More specifically, we agreed that more dialogue about the nature of harvest management objectives and regulatory alternatives was necessary for successful implementation of the strategy. Failure to agree on crucial policy aspects of the proposed strategy in a timely fashion increases the risk that more drastic regulatory measures may be necessary in the future, and having considered all of these concerns, we agreed that another year is needed to develop consensus on a harvest strategy for scaup. We believe that one year is sufficient time to resolve all outstanding issues and it is our intent to implement a strategy in 2008. However, we further stated that our decision did not preclude the possibility that we would consider possible changes to scaup harvest regulations for the 2007–08 hunting season, based on population status.

We remain disappointed that collectively we have not made the progress anticipated in the development of a viable strategy to manage harvest that acknowledges the uncertainty about what factors are really influencing scaup numbers, but at the same time provides guidance on what changes in regulations are still appropriate. Although we remain very concerned about the continued decline in scaup numbers and other evidence that this species is not doing well, we are proposing no change in scaup regulations for the 2007–08 hunting season. Our decision is made with the firm understanding that a harvest strategy will be available for 2008–09 and our understanding that outstanding policy issues will be resolved and incorporated into a final strategy in time for adoption in June 2008. We will work with the Flyway Councils to resolve

outstanding issues and to continue ongoing cooperative efforts to improve the monitoring programs and databases upon which scaup regulatory decisions are based. These include: evaluation of potential biases in population estimates, expansion and improvement of population surveys, and a feasibility assessment of a broad-scale scaup banding program. Additionally, we will continue retrospective analyses of existing databases to assist in the identification of causal factors which might explain the continued scaup decline.

In preparation for that dialogue, we reiterate our longstanding objections to State-specific regulations and encourage the Flyway Councils to focus efforts on achieving consensus around Flyway-wide regulatory alternatives. Secondly, we recognize that additional effort is necessary over the coming year to communicate the rationale for a scaup strategy and possible regulatory changes to the Flyways and the public. We intend to review progress on policy issues at the winter 2008 SRC meeting and anticipate significant progress by that time.

vii. Mottled Ducks

While we do not recommend any changes in mottled duck hunting regulations at this time, we remain concerned about mottled duck status, especially those in the Western Gulf Coast region of Louisiana and Texas. However, we commend the progress made on the management of mottled ducks over the past year-and-a-half, including the identification of two management populations and work on range-wide breeding surveys in Florida and the Western Gulf Coast. We are committed to managing the Western Gulf Coast as a single stock of birds, and acknowledge the challenges that are associated with a population boundary that includes more than one Flyway. We request that both the Central and Mississippi Flyways work together to consider how a reduction in harvest, by as much as 30 percent if necessary, can be achieved with regulatory changes. We are confident that the Flyways will be able to adequately address harvest management of mottled ducks as a single Western Gulf Coast population unit and we look forward to considering a coordinated proposal during the 2008–09 regulatory cycle. During the coming year, we will continue to explore methods to assess mottled duck population status and refine our understanding of population and harvest dynamics.

Further, we recognize that the mottled duck is an integral part of the Central Flyway's Hunter's Choice bag-limit experiment, and we support continued inclusion of the mottled duck among those species with bag-limit restriction in the experiment as requested by the Central Flyway Council. However, we reiterate that if it is determined that further reductions in harvest, or a different approach to harvest reduction, are warranted at any time over the course of the Hunter's Choice experiment, we will make those necessary changes. Thus, the continued implementation of this experiment will not preclude any future changes in hunting regulations that may be deemed necessary on an annual basis for mottled ducks.

viii. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that tundra swans be added to the list of eligible species legal to hunt during special youth waterfowl hunts and that we allow the take of tundra swans during the special youth waterfowl hunt day(s) to those individuals holding a valid permit/tag. Further, the Council recommended that this proposed take occur regardless of whether the youth hunt day(s) are inside or outside the current tundra swan hunting framework.

Service Response: Currently, tundra swans may be taken by individuals holding a valid permit/tag at any time during the open season without any additional provisions. Since tundra swan harvests are tightly controlled in each State where a limited number of permits are issued, we see no reason not to allow youth to harvest a tundra swan as they will still have to possess a valid tag that is issued by random draw prior to the hunting season. Further, we note that the revised (2007) Eastern Population Tundra Swan Management plan advocates the issuance of tundra swan hunt permits during youth waterfowl days, regardless of whether these youth waterfowl hunting days are inside or outside the current framework. Thus, we propose to approve the addition of tundra swans to the list of eligible species for youth swan hunts and to allow the take of tundra swans inside or outside the tundra swan hunting frameworks.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council forwarded a number of recommendations concerning Canada geese. First, the Council recommended the approval of a minor change in the delineation of High and Low North Atlantic Population (NAP) harvest zones in New York. They further recommended that Connecticut's NAP zones be adjusted to account for the current harvest distribution of NAP and resident Canada geese and to simplify zone boundaries. In Resident Population (RP) areas, the Council recommended the allowance of an 80-day Canada goose hunting season, with a 5-bird daily bag limit, and a 3-way split. In the RP harvest area of New York, they further recommend that the framework closing date be extended to March 10, beginning this fall. They recommended reclassifying a small portion of the Northeast Goose Hunt Zone in Northampton County, North Carolina, to a Southern James Bay Population (SJBP) Hunt Zone designation. Lastly, they recommended that the SJBP Canada goose harvest strategy be revised in the SJBP Management Plan before changes to the SJBP harvest areas or season liberalization are considered in both Flyways.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a number of changes in Canada goose zones, seasons lengths, and bag limits for several States in the Flyway. These changes are an outgrowth of the evolution of Canada goose harvest management philosophy in the Flyway. The change in philosophy in the Flyway is driven by the increasing numbers of giant Canada geese and the diminishing importance of interior Canada geese to goose harvest opportunities in the Flyway. The large numbers of giant Canada geese in most States appear to be buffering, to some extent, hunting pressure on interior Canada geese. These changes will allow States to evaluate the potential of this buffering effect as well as the impacts of stable regulations on interior Canada goose populations.

The Central Flyway Council recommended several changes for dark goose regulations. In the West-Tier, they recommended an increase in season length (from 95 to 107 days) in Colorado and an increase in bag limit (from 3 to 4) in Colorado and Texas. In the East-Tier, they recommended removing the Big Stone Power Plant area restriction in South Dakota.

The Pacific Flyway Council recommended the following area, bag, and season length changes described below:

1. Increase the bag limit to 6 geese per day in the California Northeastern and Balance of State Zones;

2. Increase the daily bag limit for small Canada geese in the California

Balance-of-State Zone to 6 geese per day;

3. Eliminate the closed zone of Tillamook County, Oregon, include the county in the NW Oregon Permit Goose Zone, and establish a daily bag limit of dark geese of 3 including not more than 2 cackling or Aleutian geese; and

4. Revise Idaho zone designations for 4 counties, to move all parts of Power County from Zone 3 to Zone 5 and move Blaine and Camas Counties and Cassia County within Minidoka National Wildlife Refuge from Zone 3 to Zone 4.

Service Response: We concur with the Atlantic Flyway Council's recommendations to adjust delineation of High and Low NAP harvest zones in New York and Connecticut to account for the current harvest distribution of NAP. The Atlantic Flyway Management Plan for NAP Canada geese allows for a two-tiered approach to harvest management for this population. ''High Harvest'' zones are defined as those areas within each State containing 70% or more of all NAP leg band recoveries, whereas ''Low Harvest'' areas are all other areas of each State within existing NAP zones. Use of High and Low harvest zones allows States to increase and direct harvest opportunity towards RP geese in areas where relatively few NAP geese will be affected. Under this revised delineation, New York's High and Low harvest zones would contain approximately 83% and 17%, respectively, of all NAP band returns, still well within the management plan criteria. In Connecticut, only 11 percent of all NAP recoveries have occurred in the NAP–L zone since delineation (2002) of these harvest zones, and no NAP recoveries have occurred in the proposed area of change. Both of these changes would not only allow for more harvest of RP geese, but would have minimal impact to NAP geese.

We also concur with the Atlantic Flyway Council's recommendations regarding frameworks for RP harvest areas. Resident Canada geese are overabundant in many areas of the Atlantic Flyway and currently number approximately 1.2 million birds, or nearly double the goal in the Atlantic Flyway Resident Canada Goose Management Plan of 650,000 geese. Allowance of an 80-day season, combined with the 25-day special Canada goose season in September, and the 2-day Youth Waterfowl Hunting Days, would potentially allow 107 days of harvest opportunity for RP geese, the maximum allowed under the Migratory Bird Treaty Act. Further, allowing 3-way splits within the regular season would provide States with greater flexibility for setting their seasons. All of these objectives are consistent with those identified in the Service's 2005 Final Environmental Impact Statement on Resident Canada Goose Management (70 FR 69985, November 18, 2005). Since RP areas were first established in 2002 (with 70-day seasons and a 5-bird daily limit), available band recovery data from the first 3 seasons (2002–2004) indicate that harvest of migrant geese (AP, NAP and SJBP) has been negligible. Further, the March 10 closing date in New York will not adversely impact AP geese migrating north in early spring as data indicate that AP geese make only minimal use of the RP area in New York. Lastly, delays in opening framework dates will be maintained to avoid any harvest of migrant geese during peak fall movements (e.g., early to mid October in New York) to southern regions of the flyway.

We also agree with the Atlantic Flyway Council's recommendation to reclassify a small portion of the Northeast Goose Hunt Zone in Northampton County, North Carolina, to an SJBP Hunt Zone designation. Northampton County currently includes portions of two Canada goose hunt zones—an AP zone designation and an SJBP zone designation. Over the last 15 years, the AP zone in North Carolina has decreased in size due to contemporary information regarding locations of migrant Canada goose flocks and population affiliation. While Northampton County does hold migrant geese from both the AP and SJBP, the Flyway's original intent in including this small portion of Northampton County in the AP zone occurred at a time when the AP population was reduced throughout the entire Flyway, and when the Service's and Flyway's goal was to provide maximum protection to AP geese in North Carolina. Since then, AP geese have rebounded from low numbers in the late 1990s, and the hunting of AP geese in North Carolina has been relaxed to some extent.

We do not agree with the framework changes and season liberalizations proposed by the Mississippi Flyway Council to the SJBP harvest areas. SJBP Canada geese are managed through a management plan developed cooperatively by the Atlantic and Mississippi Flyways. In recent years, the Mississippi Flyway has undergone major changes in their philosophical approach to Canada goose management. As a result, the Mississippi Flyway Council has instituted changes in their regulatory approach to MVP, SJBP, and RP Canada goose management. While the Mississippi Flyway Council believes that their 2007–08 proposals for SJBP regulations are consistent with the current management plan, the Atlantic Flyway Council believes that more dialogue is needed on these proposals before they can support them. Given the lack of consensus between the two Flyways, we do not support changes to SJBP regulations at this time. We encourage the two Flyways to revise the SJBP management plan to reflect evolving philosophies of Canada goose management in general.

We concur with the Central Flyway's recommendation to increase the season length from 95 to 107 days for dark geese in Colorado and increase the daily bag limit in Colorado and Texas. The 2005–07 average (211,627) of mid-winter counts for the Hi-Line Population of Canada geese remains well above the established objective level (>85,000). Further, the 2005–07 average (200,821) of mid-winter counts for the Shortgrass Prairie Population of Canada geese also remains above the established population objective (150,000–200,000). Given the status of these populations and the established population objective levels, we agree that the proposed increase in season length in Colorado and the daily bag limit increases in Colorado and Texas are commensurate with the status of the populations.

Regarding the Central Flyway Council's recommendation to remove the Big Stone Power Plant area restriction in South Dakota, we agree. The restriction was put in place in 1997 due to potential concerns related to the status of Eastern Prairie Population (EPP) Canada geese. These geese nest in the Hudson Bay Lowlands of Manitoba and concentrate primarily in Manitoba, Minnesota, and Missouri during winter. The 2007 spring estimate of EPP geese was 217,500, 17 percent higher than the 2006 estimate. Spring estimates have increased an average of 3 percent per year over the last 10 years. Furthermore, the estimated number of productive geese in 2007 increased from 2006 and reached a record-high level. We see no reason to continue this restriction.

We also concur with all of the recommendations forwarded by the Pacific Flyway Council. We support the changes proposed and recognize that the changes in California and Oregon are intended to address increasing depredation problems associated with Aleutian Canada geese. Aleutian Canada geese continue to increase rapidly and currently are above the population objective levels identified in the Flyway management plan. We further note that Pacific Flyway white-fronted geese and Aleutian Canada geese are at the highest

population levels that have observed in the last 15 years. The proposed increased harvest opportunity will help address depredation concerns in northwest California and southwest Oregon associated with both of these populations. The other changes proposed for Canada geese in Washington, Utah, and Nevada, are relatively minor boundary changes in harvest zones or bag limit increases that will help address depredation concerns in these States and will not impact the harvest of other Canada goose populations of management concern in the Flyway. The proposed zone boundary change in Idaho is an administrative change and is not expected to have any measurable impact on the goose harvest from these areas.

C. Special Late Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a 3-year experimental late Canada goose season for a 30-county area in Indiana during February 1–15. The 15-day season would be designed to increase harvests of local giant Canada geese.

Service Response: We concur with the Council on the creation of an experimental late Canada goose season in Indiana. The 2007 population estimate for Mississippi Flyway Giant Population Canada geese (MFGP) breeding in Indiana is 125,000, and the established population goal is 80,000. While Indiana has used special September Canada goose seasons to control locally-breeding MFGP, complaints regarding breeding MFGP in Indiana continue to increase. We agree that a special late goose season could help control Indiana's breeding Canada goose population. Available collar and harvest data indicate that the proposed experimental area is comprised of well above the 80 percent non-migrant geese, as required by the current criteria.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommends a 50-day season with a 2-bird daily bag limit for Atlantic brant.

Service Response: We concur with the Atlantic Flyway Council recommendation. The 2007 Mid-Winter Index (MWI) for Atlantic brant was 150,559. While the Brant Management Plan prescribes a 50-day season with a 2-bird daily bag limit when the MWI estimate falls within 125,000–150,000, and consideration of a 60-day season with a 3-bird daily bag limit when the MWI estimate is above 150,000, the outlook for productivity is below average due to highly variable conditions on the main breeding grounds. Thus, we agree with the Council that an increase of 20 days without the associated daily bag limit increase is a conservative approach to harvest management for the upcoming season.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Annual NEPA considerations are covered under a separate Environmental Assessment (EA), ''Duck Hunting Regulations for 2007–08,'' and an August 24, 2007, Finding of No Significant Impact (FONSI). Copies of the EA and FONSI are available upon request from the address indicated under **ADDRESSES.**

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as we announced in a March 9, 2006, **Federal Register** notice (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available either at the address indicated under **ADDRESSES** or on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Prior to issuance of the 2007–08 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act.

Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the total consumer surplus of the annual duck hunting frameworks is on the order of $222 to $360 million, with a mid-point estimate of $291 million. We plan to perform a full update of the analysis in 2008. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the duck hunters would spend between $291 million and $473.5 million at small businesses in 2007. We plan to perform a full update of the analysis in 2008 when the full results from the 2006 National Hunting and Fishing Survey is available. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (PRA). There are no new information collections in this proposed rule that would require OMB approval under the PRA. The existing various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 11 proposed rule we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2007–08 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with all the Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2007–08 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 22, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2007–08 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2007, and March 10, 2008.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not

duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 2 scaup, 1 black duck, 1 pintail, 2 canvasbacks, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit; and between October 1 and February 15, a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: In specific areas, an 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland:

Resident Population (RP) Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts:

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between October 20 and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey:

Statewide: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York:

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 27), except in the Lake Champlain Area where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 27) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina:

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 30-day experimental season (1,000 permits) may be held concurrent with the season selected for the Back Bay Area of Virginia. The seasonal bag limit is 1 bird.

Pennsylvania:

SJBP Zone: A 70-day season may be held between the second Saturday in October (October 13) and February 15, with a 2-bird daily bag limit until January 14 and a 5-bird daily bag limit between January 15 and February 15.

Pymatuning Zone: A 50-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31,

with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held during November 15 to February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont: A 45-day season may be held between the fourth Saturday in October (October 27), except in the Lake Champlain Zone and Interior Zone where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

Virginia:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Back Bay Area: A 30-day experimental season may be held between December 24 and January 26 in the AP Zone, with a 2-bird daily bag limit.

West Virginia: An 80-day season may be held between October 1 and January 31, with a 5-bird daily bag limit. The season may be split into 3 segments.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 22) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 2 scaup, 1 black duck, 1 pintail, 2 canvasbacks, 2 wood ducks, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 22) and March 10; for white-fronted geese not to exceed 72 days with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 22) and the Sunday nearest February 15 (February 17); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 22) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 22) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 50 days. In the remainder of the State, the season may not exceed 40 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois: The season for Canada geese may extend for 85 days in the North and Central Zones and 66 days in the South Zone. The daily bag limit is 2 Canada geese.

Indiana: The season for Canada geese may extend for 74 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Late Canada Goose Season Zone—An experimental special Canada goose season of up to 15 days may be held during February 1–15. During this special season the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 90 days. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone—The season for Canada geese may extend for 70 days (85 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 16 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with a 72-day white-fronted goose season or 1 white-fronted goose with an 86-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan:

(a) MVP—Upper and Lower Peninsula Zones—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season is 45 days. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU—The Canada goose season is 45 days. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50

days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan Late Season Canada Goose Zone—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota:

(a) West Zone—

(1) West Central Zone—The season for Canada geese may extend for 41 days. The daily bag limit is 2 Canada geese.

(2) Remainder of West Zone—The season for Canada geese may extend for 60 days. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 79 days and may be split into 3 segments provided that at least 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 15 and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 60 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 40 days and the daily bag limit is 2 Canada geese. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee:

(a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before October 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

Wisconsin:

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The season may not exceed 70 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 85 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days may start no earlier than the Saturday nearest December 10 (December 8).

(2) Remainder of the Central Flyway: 74 days.

Bag Limits:

(1) Colorado, Montana, Nebraska, New Mexico, and Oklahoma: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 2 scaup, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State. A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Kansas, North Dakota, South Dakota, Texas, and Wyoming: The daily bag limit is 5 ducks, with species and sex restrictions as follows: 2 scaup, 2 redheads, and 2 wood ducks, and only 1 duck from the following group—hen mallard, mottled duck, pintail, canvasback.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 22) and the Sunday nearest February 15 (February 17). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 22) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3.

Additionally, in the Eastern Goose Zone of Texas, an alternative season of

107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or a 86-day season with a bag limit of 1.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 107 days. The daily bag limit is 4 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 4. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 2 canvasbacks, 3 scaup, and 2 redheads.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29), and the last Sunday in January (January 27). Basic daily bag limits are 4 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

In Oregon's South Coast Zone and California's North Coast Special Management Area, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent in both zones. A 3-way split season may be selected in Oregon's South Coast Zone.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 22), and the last Sunday in January (January 27). Basic daily bag limits are 4 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California:

Northeastern Zone: The daily bag limit is 6 dark geese and may include no more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 3).

Balance-of-the-State Zone: Limits may not include more than 6 dark geese per day including 6 cackling Canada geese or 6 Aleutian Canada geese. In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

Harney, Lake, and Malheur County Zone: For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Klamath County Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (September 29), and March 10. A 3-way split season may be selected. The daily dark goose bag limit is 4 dark geese and 4 white geese except for hunting days that occur after the last Sunday in January when only white-fronted geese may be taken with a daily bag limit of two.

Northwest Special Permit Zone: Except for designated areas outside of Tillamook County, the daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese. In those designated areas of Tillamook County open to hunting, the daily bag limit of dark geese is 2.

South Coast Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Southwest Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Washington: The daily bag limit is 4 geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: The daily bag limit is 4 geese.

Nevada: The daily bag limit for dark geese is 3.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on dark geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of dark geese in those designated areas will only be by

hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10.

In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 2). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (September 29). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 9) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 6) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2008, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (September 29) to January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut:

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine:

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts:

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire:

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey:

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and

extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York:

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania:

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont:

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia:

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama:

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois:

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff—Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Indiana:

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa:

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky:

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana:

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Michigan:

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota:

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23, east along State Highway 23 to State Highway 39, then east along State Highway 39 to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The remainder of Minnesota.

Missouri:

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio:

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 33 to State Route 127, south along SR 127 to SR 703, south along SR 703 to SR 219, east along SR 219 to SR 364, north along SR 364 to SR 703, east along SR 703 to SR 66, north along SR 66 to U.S. 33, east along U.S. 33 to SR 385, east along SR 385 to SR 117, south along SR 117 to SR 273, east along SR 273 to SR 31, south along SR 31 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 95, east along SR 95 to SR 13, southeast along SR 13 to SR 3, northeast along SR 3 to SR 60, north along SR 60 to U.S. 30, east along U.S. 30 to SR 3, south along SR 3 to SR 226, south along SR 226 to SR 514, southwest along SR 514 to SR 754, south along SR 754 to SR 39/60, east along SR 39/60 to SR 241, north along SR 241 to U.S. 30, east along U.S. 30 to SR 39, east along SR 39 to the Pennsylvania State line.

South Zone: The remainder of Ohio.

Tennessee:

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin:

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion):

Eastern Plains Zone: That portion of the State east of Interstate 25, and all of El Paso, Pueblo, Heurfano, and Las Animas Counties.

Mountain/Foothills Zone: That portion of the State west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Heurfano, and Las Animas Counties.

Kansas:

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; southwest on U.S. 56 to KS 19; east on KS 19 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to Ford Co. Road 126; south on Ford Co. Road 126 to U.S. 400; northwest on U.S. 400 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion):

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska:

High Plains Zone: That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. 183, south on U.S. 183 to U.S. 20, west on U.S. 20 to NE 7, south on NE 7 to NE 91, southwest on NE 91 to NE 2, southeast on NE 2 to NE 92, west on NE 92 to NE 40, south on NE 40 to NE 47, south on NE 47 to NE 23, east on NE 23 to U.S. 283 and south on U.S. 283 to the Kansas-Nebraska border.

Low Plains Zone 1: That portion of Dixon County west of NE 26E Spur and north of NE 12; those portions of Cedar County north of NE 12; those portions of Knox counties north of NE 12 to intersection of Niobrara River; all of Boyd County; Keya Paha County east of U.S. 183. Both banks of the Niobrara River in Keya Paha, Boyd, and Knox counties east of U.S. 183 shall be included in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. 75 to U.S. 136; east to the intersection of U.S. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE 2; west to U.S. 75; north to NE 2; west to NE 43; north to U.S. 34; east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to County Road 22 (Hamilton County);

west to County Road M, south to County Road 21; west to County Road K; south U.S. 34; west to NE 2; south to U.S. I–80; west to Gunbarrel Road. (Hall/Hamilton county line); south to Giltner Road.; west to U.S. 281; south to U.S. 34; west to NE 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County line); east to County Road #438 (Harlan County line); south to U.S. 34; south and west to U.S. 136; east to NE 14; south to the Kansas-Nebraska border, west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; west and north to NE 91 to U.S. 281; south to NE 22; west to NE 11; northwest to NE 91; west to Loup County Line, north to Loup-Brown county line; east along northern boundaries of Loup, Garfield and Wheeler counties; south on the Wheeler-Antelope county line to NE 70; east to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to U.S. 75, north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. 75 and the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion):

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota:

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma:

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota:

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt-Canning road to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas:

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion):

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona:

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California:

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town or Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99: south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south

on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho:

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; Blaine; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada:

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon:

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah:

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington:

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming:

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of Flyway Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut:

NAP L–Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County; starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to the Naugatuck River; north on the Naugatuck River to the Litchfield County line, then extending west along the Litchfield County line to the intersection of the Litchfield and Fairfield County lines.

NAP H–Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland:

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, Howard, and Montgomery Counties; that portion of Baltimore County south of Route 138, Route 137, and Mount Carmel Road; that portion of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that portion of Prince George's County west of Route 3 and Route 301, that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County south of Route 88, west of Route 30 from the intersection of Route 30 and Route 88 to the intersection of Route 30 and Route 482, south of Route 482, south of Route 27 from the intersection of Route 27 and Route 482 to the intersection of Route 27 and Route 97, and west of Route 97 from the Intersection of Route 27 and Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts:

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire:

Same zones as for ducks.

New Jersey:

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west

along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York:

Lake Champlain Goose Area: That area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to the south bank of the Susquehanna River, southwest along the south bank of the Susquehanna River to Interstate Route 88 near Harpursville, west along Route 88 to Route 79, northwest along Route 79 to Route 26 in Whitney Point, southwest along Route 26 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, south along Route 39 to Route 19A (south of Castile), south and southeast along Route 19A to Route 436, east along Route 436 to Route 36 in Dansville, south along Route 36 to Route 17, east along Route 17 to Belfast Street at Bath, east along Belfast Street to Route 415 (West Washington Street), southeast along Route 415 to Route 54, northeast along Route 54 to Steuben County Route 87, northeast along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to

Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead, south on Roanoke Avenue (which becomes County Route 73) to State Route 25, west on Route 25 to Peconic Avenue, south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue), south on CR 104 to CR 31 (Old Riverhead Road), south on CR 31 to Oak Street, south on Oak Street to Potunk Lane, then west on Stevens Lane, then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89), then due south to International waters.

Western Long Island Goose Area (NAP Low Harvest Area): The remainder of the Long Island Waterfowl Hunting Zone, excluding the Eastern Long Island Goose Area, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of Westchester County lying southeast of Interstate Route 95, and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina:

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania:

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer counties and the area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line).

SJBP Zone: Erie, Mercer and Crawford Counties except for the Pymatuning Zone.

Pymatuning Zone: The area south of SR 198 from the Ohio State line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line.

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island:

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina:

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont:

Same zones as for ducks.

Virginia:

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into

Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia:

Same zones as for ducks.

Mississippi Flyway

Alabama:

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas:

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois:

Same zones as for ducks.

Indiana:

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, Elkhart, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Indiana Late Canada Goose Season Zone: That part of the state encompassed by the following counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa:

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky:

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan:

MVP-Upper Peninsula Zone: The MVP-Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP-Lower Peninsula Zone: The MVP-Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone: The rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly (mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota:

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due

south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri:

Same zones as for ducks but in addition:

Middle Zone:

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio:

Same zones as for ducks but in addition:

North Zone:

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee:

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin:

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly along Poplar Grove Road to Rockea Road, southerly along Rockea Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion):

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska:

Dark Geese:

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east

along U.S. Hwy 20 to NE Hwy 137, north along NE Hwy 137 to the Niobrara River, east along the Niobrara River to the Boyd County line, north along the Boyd County line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer—Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese:

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion):

Dark Geese:

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota:

Canada Geese:

Unit 1: Remainder of South Dakota.

Unit 2: Bon Homme, Brule, Buffalo, Charles Mix, Custer east of SD Hwy 79 and south of French Creek, Dewey south of U.S. Hwy 212, Fall River east of SD Hwy 71 and U.S. Hwy 385, Gregory, Hughes, Hyde south of U.S. Hwy 14, Lyman, Potter west of U.S. Hwy 83, Stanley, and Sully Counties.

Unit 3: Bennett County.

Texas:

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion):

Dark Geese:

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Area 4: Big Horn and Fremont Counties.

Pacific Flyway

Arizona:

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California:

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road;

south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I-5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion):

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho:

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine; Camas; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County.

Montana (Pacific Flyway Portion):

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada:

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion):

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon:

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County is open to goose hunting except for the following area—beginning in Cloverdale at Hwy 101, west on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr, due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creeks and then Hawk Creeks to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 at Cloverdale, point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Lake, and Malheur County Zone: All of Harney, Lake, and Malheur Counties.

Klamath County Zone: All of Klamath County.

Utah:

Northern Utah Zone: All of Cache and Rich Counties, and that portion of Box Elder County beginning at I–15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the

northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Remainder-of-the-State Zone: The remainder of Utah.

Washington:

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California:

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington:

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion):

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada:

Open Area: Churchill, Lyon, and Pershing Counties.

Utah:

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

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Federal Register

Friday,

August 31, 2007

Part VIII

The President

Proclamation 8169—Minority Enterprise Development Week, 2007

Federal Register
Vol. 72, No. 169
Friday, August 31, 2007

Presidential Documents

Title 3—

The President

Proclamation 8169 of August 28, 2007

Minority Enterprise Development Week, 2007

By the President of the United States of America

A Proclamation

Minority Enterprise Development Week is a chance to highlight the accomplishments of minority business owners and underscore our commitment to strengthening minority businesses and helping these entrepreneurs succeed.

Minority business owners have made our Nation stronger. Our thriving and resilient economy is the envy of the world, and minority business owners are expanding opportunities for their fellow Americans.

More than 8 million jobs have been created in our country since August 2003, and minority businesses have contributed to this progress. Our economy has experienced more than 5 years of uninterrupted growth, and the unemployment rate remains low. My Administration has worked with the Congress to deliver needed tax relief, and this has left more money in the hands of minority business owners to reinvest in their employees, their communities, and our country's robust economy. By adopting sound policies that help our businesses continue to grow and expand, we are ensuring that America remains the land of the entrepreneur.

Our Nation has the most innovative, industrious, and talented people on Earth and when we unleash their entrepreneurial spirit, there is no limit to what the American people can achieve. During Minority Enterprise Development Week, and throughout the year, we recognize the vital contributions of minority business owners. These dedicated individuals are helping create a more hopeful society for themselves and their families. We will continue to strive for a society where personal effort is rewarded and where the American dream is within the reach of all our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 9 through September 15, 2007, as Minority Enterprise Development Week. I call upon all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the many contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 31, 2007

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Fresh fruit and vegetable terminal market inspection services; fees increase; published 8-1-07

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Phytosanitary treatments; cold treatment enclosures and requirements; published 7-2-07

Technical amendment; published 8-31-07

COMMERCE DEPARTMENT

Patent and Trademark Office

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Trademark Trial and Appeal Board rules; miscellaneous changes; published 8-1-07

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Special calls for information; published 8-31-07

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Air quality implementation plans; approval and promulgation; various States:

Arizona; published 8-1-07

Maryland; published 8-1-07

FEDERAL COMMUNICATIONS COMMISSION

Radio frequency devices:

Unlicensed devices and equipment approval—

Unlicensed transmitters; spectrum etiquette; published 8-1-07

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AGENCY FOR INTERNATIONAL DEVELOPMENT

Commodity transactions financed by USAID; applicable rules and procedures; miscellaneous amendments; comments due by 9-7-07; published 7-9-07 [FR 07-03309]

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Agricultural Marketing Service

Dairy Product mandatory Reporting Program; establishment; comments due by 9-4-07; published 7-3-07 [FR 07-03235]

Livestock mandatory reporting:

Swine, cattle, lamb, and boxed beef; reporting regulations reestablishment and revision; comments due by 9-7-07; published 8-8-07 [FR 07-03857]

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Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, crab, salmon, and scallop; correction; comments due by 9-4-07; published 8-2-07 [FR E7-15045]

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 9-5-07; published 8-6-07 [FR E7-15211]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 9-4-07; published 8-17-07 [FR E7-16234]

Pacific Coast groundfish; comments due by 9-6-07; published 8-8-07 [FR E7-15339]

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Small Business Rerepresentation; comments due by 9-4-07; published 7-5-07 [FR 07-03279]

EDUCATION DEPARTMENT

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Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs; comments due by 9-6-07; published 8-7-07 [FR E7-15306]

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Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 9-5-07; published 8-6-07 [FR E7-15118]

Florida; comments due by 9-4-07; published 8-2-07 [FR E7-14981]

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Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 9-4-07; published 8-2-07 [FR E7-15026]
Hawker Beechcraft Corp.; comments due by 9-4-07; published 7-6-07 [FR E7-13088]
International Aero Engines; comments due by 9-7-07; published 7-9-07 [FR E7-13256]
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Income taxes:
Domestic production activities; attributable income deduction; comments due by 9-5-07; published 6-7-07 [FR E7-10821]

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 "PLUS" (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. 2863/P.L. 110–75
To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76
To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77
To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78
To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79
Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80
To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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