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

WHEN: Wednesday, November 14, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. APHIS–2006–0122]

RIN 0579–AC43

Export Certification for Wood Packaging Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the export certification regulations to clarify that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate and thus may be issued only when the organization applying the mark has entered into an agreement with the Animal and Plant Health Inspection Service. The interim rule also removed all references to a certificate of heat treatment from the regulations because such certificates have been replaced by the ISPM 15 quality/treatment mark. The interim rule was necessary to ensure the appropriate issuance of the ISPM 15 quality/treatment mark.

DATES: Effective on October 30, 2007, we are adopting as a final rule the interim rule published at 72 FR 35915–35917 on July 2, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones II, Forestry Trade Director, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published in the **Federal Register** on July 2, 2007 (72 FR 35915–35917, Docket No. APHIS–2006–0122), we amended the export certification regulations in 7 CFR part 353 by clarifying that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate and thus may be issued only when the organization applying the mark has entered into an agreement with the Animal and Plant Health Inspection Service.

Comments on the interim rule were required to be received on or before August 31, 2007. We received one comment by that date. The comment was from a State department of natural resources and supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

PART 353—EXPORT CERTIFICATION

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 353 and that was published at 72 FR 35915–35917 on July 2, 2007.

Done in Washington, DC, this 24th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–21316 Filed 10–29–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0122.*

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC05

Common Crop Insurance Regulations; Potato Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Common Crop Insurance Regulations; Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, Northern Potato Crop Insurance Storage Coverage Endorsement, and the Central and Southern Potato Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds, and to reduce vulnerability to fraud, waste, and abuse. The changes will apply for the 2008 and succeeding crop years for the Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, and the Northern Potato Crop Insurance Storage Coverage Endorsement. The Central and Southern Potato Crop Insurance Provisions changes will apply for the 2009 and succeeding crop years.

EFFECTIVE DATE: This rule is effective November 29, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lopez, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This Office of Management and Budget (OMB) has determined that this rule is non significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On July 28, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 42761–42770 to revise 7 CFR 457.142 Northern Potato Crop Insurance Provisions, 457.143 Northern Potato Crop Insurance Quality Endorsement, 457.144 Northern Potato Crop Insurance Processing Quality Endorsement, 457.145 Potato Crop Insurance Certified Seed Endorsement, 457.146 Northern Potato Crop Insurance Storage Coverage Endorsement, and 457.147 Central and Southern Potato Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 91 comments were received from 5 commenters. The commenters were reinsured companies, an agent, a trade association, an insurance service organization, and other interested parties. The comments received and FCIC's responses are as follows:

Northern Potato Crop Insurance Provisions

Comment: A few commenters stated that the proposed addition of Kansas, San Juan county, NM; and ''* * * any other states or counties if allowed by the Special Provisions'' to the list of counties/states that use the Northern Potato Insurance Crop Provisions appears to be an incorporation of present policy rather than an actual change since the 2006 Special Provisions for Kansas and San Juan County already refers to coverage under the Northern Potato Crop Insurance Provisions. The commenters stated that with the addition of the text ''and any other states or counties if allowed by the Special Provisions'', it will need to be made clear in the Special Provisions whether the specific state and county is covered under the Northern Potato Crop Insurance Provisions or the Central and Southern Provisions.

Response: The commenters are correct that insurance in Kansas and San Juan County, New Mexico was previously allowed by the Special Provisions and this merely codifies their inclusion. Since Kansas is now included under these provisions, a calendar date for the end of the insurance period must be added. After additional review, it was determined that due to the agronomic conditions in the state, the end of the insurance period date needed to be changed from the date published in proposed rule. Once this final rule is published, any additional states or counties to be included under the Northern Potato Crop Insurance Provisions will be specified in the Special Provisions of the applicable state and counties.

Comment: A few commenters stated that the new language in the proposed definition of ''grade inspection,'' that states ''produced or sold for'' should be

revised to ''produced for''. The commenters stated that in the Pacific Northwest, some growers grow potatoes for the open market and the potatoes may be produced for a different purpose for which they are sold. For example, they may be intending to grow for fresh, but they may change their minds if the processor is paying a better price. Other growers may be intending to go processing, but they do not have a processor contract, and they divert their potatoes to the fresh market if the quality and price is good. The commenters stated that this language does not have a big impact on the basic policy, since the basic policy only covers soft rot damage and freeze damage, which is the same for fresh or processing potatoes. However, it does have a big impact on the Quality Endorsement. The producer must select their quality option based on the intended use of the crop. The commenters stated that their intended use should be the basis for grading the crop, not the use for which they are sold. If the fresh potatoes are damaged, they will most likely be sold for processing. The commenters stated that to prevent abuse, the Quality Endorsement should state that producers who are intending to grow for the processing market as of the acreage reporting date are not allowed to purchase the fresh grades under the Quality Endorsement. The commenters agreed with the proposal to distinguish between the different grading standards, but recommend that, instead of explaining what the U.S. Standards are in this definition, a separate definition for ''U.S. Standards'' or ''U.S. Standards for Grades of Potatoes'' be created. Within this definition, it also would appear appropriate to include ''intended to be produced * * *'' This is because the producer is now required to inform the insurance provider of the insured's intention prior to any grade inspection that would include one made for an appraisal.

Response: The commenter is correct that the definition of ''grade inspection'' should state, ''produced for'' and has made this change. Producers should not be penalized for attempting to mitigate their losses by selling their damaged potatoes in the processing market. However, the commenter is also correct that something needs to be done to prevent producers who intend to sell their crop for processing from purchasing the fresh market option in order to increase their indemnity. Therefore, producers who are growing potatoes for processing or chipping should not be allowed to purchase protection under the fresh market standards and FCIC has revised section 10 of the Northern Potato Crop Insurance Quality Endorsement accordingly. There is no need to provide a separate definition of ''U.S. Standards'' or ''U.S. Standards for Grades of Potatoes''. The term ''grade inspection'' does not contain a definition of U.S. Standards or U.S. Standards for Grades of potatoes. It only provides a reference so the reader will know which standard is applicable. Because those standards may change, it would not be appropriate to include them in this rule.

Comment: A few commenters recommended optional units to be allowed by type as well as by the divisions allowed in the Basic Provisions in the Unit Division section. A commenter stated that since the production for each potato type (red, white, etc.) is stored and sold separately, the proposed rule would apply quality adjustment according to the final use of the potato production. The commenter stated that this proposal might require further study before implementation because of the effect it might have on the premium rates (if optional units are added by type but are not elected by the insured, the basic unit discount would apply). A commenter stated that currently production for each type is stored and sold separately. Each type has a separate end use, for example, reds are used for table stock and whites are used for chipping, and production records for each type are being kept separate. The commenter stated that the new proposed rule is also adding language for quality adjustments being made on final use of the potato. It only seems appropriate to allow the insured to have separate units based on each type that is listed in their respective Special Provisions.

Response: Since no changes to the Unit Division section were proposed, the proposed changes would be substantive in nature and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters had concerns regarding the increasing of the percentage of the price election from 80 percent to 90 percent for unharvested acreage in proposed section 2(b). The commenters stated that FCIC originally included cost percentages for only 5 states. As most of the 5 states insure potatoes grown under irrigation, which would result in harvest costs being a lesser percentage of the total, due to the increased costs for irrigation, the commenters questioned whether these percentages reflect all areas of potato insurability. The commenters recommended the percentage remain at 80 percent.

Response: This program change recognizes reduced input costs for unharvested production. Costs of production budgets represent the best available method for determining input costs. FCIC reviewed all data available including irrigated and non-irrigated cost of production budgets. The harvest costs were calculated as a percent of total costs and 10 percent represents the average cost for harvesting. No change has been made.

Comment: A few commenters to proposed section 2(b) referenced the RMA Informational Memorandum issued 1–13–00, which clarified situations where the insured would not qualify for 100 percent of the price election even though the potato acreage met the definition of harvested, and recommended adding clarification to the policy provisions.

Response: Although the informational memorandum has expired, FCIC agrees with the commenter and has included information provided in the memorandum into section 2(c). The provision is revised to state that potatoes that are lifted to the soil surface but are not removed from the field for will still receive the reduced price election for unharvested acreage. The provision also clarifies cases in which potatoes are damaged to the extent producers in the area would not normally further care for the production by clearly stating the reduced price election will apply even if the producer elects to continue to care for the crop.

Comment: A comment was also received regarding section 2(c), expressing concern with the text ''will be deemed to have been destroyed''. The commenter stated that in addition to the Northern Potato Crop Insurance Provisions, this same phrase is found in the Crop Provisions for: Central and Southern Potatoes; Onions; Sugar Beets; Sweet Corn (Fresh Market); Tomatoes (Fresh Market); Tomatoes (Fresh Market—GPP); and Tomatoes (Processing). The commenter stated that currently FCIC has advised this means, ''No production will be counted against such acreage'' and that this would hold true even if such acreage was later harvested. The commenter stated that this is contrary to section 11(e) of these Crop Provisions, which states: ''All harvested production from the insurable acreage * * *'' is included as the total production to count for the unit. This should apply equally as well to the

amount of the appraised production determined during an appraisal for unharvested acreage. The commenter asked that this text be revised and clarified so all parties understand this provision with the same meaning and apply it equitably.

Response: While FCIC has not proposed any changes to section 2(c), revisions are necessary to conform to the changes made in section 2(b). FCIC has revised section 2(c) to clarify that the reduced price election for unharvested acreage applies when producers in the area would not normally continue to care for the crop, even if the producer elects to continue such care and has deleted the phrase ''deemed to be destroyed''. FCIC will clarify other Crop Provisions containing the ''deemed to be destroyed'' language when proposed revisions are made. When appraisals are required or when there is harvested production, any appraised or harvested production must be counted, regardless of whether the reduced price election is applicable.

Comment: A commenter recommended removing section 2(c) and allowing section 11 to take order of precedence. If a loss is paid on acreage and the insured later harvests those acres, the loss should be reworked to include the production sold from those acres.

Response: Section 2(c) is necessary to clarify situations in which the reduced price election applies. As stated in the response above, FCIC has removed the provision relating to the crop having been deemed destroyed and any production to count must be determined in accordance with applicable policy provisions.

Comment: A few commenters recommended that section 9 be clarified to indicate, ''Fire due to lightning'' (as in the draft Tobacco Crop Provisions Proposed Rule) or ''Fire due to natural causes'' is covered (at least until the ''Combo'' Basic Provisions are issued with the clarification that all insured perils must be naturally occurring).

Response: FCIC has not proposed any changes to section 9. Further, section 12 of the Basic Provisions already clearly states all causes of loss listed in the Crop Provisions must be due to a naturally occurring event. No change has been made.

Comment: A few commenters requested that proposed section 11(d)(1)(iv) be revised to read as follows: ''Unharvested production, including unharvested production on insured acreage that you intend to put to another use or abandon, or acreage damaged by insurable causes * * *''. This ties the intended use of both ''put to another'' and ''abandon'' together.

Response: FCIC has revised section 11(d)(1)(iv) accordingly.

Comment: A few commenters stated that under proposed section 11(e)(2), they fully agree potatoes should be sampled for quality at the end of the insurance period if the Storage Coverage Endorsement is not in effect. If the Storage Coverage Endorsement is in effect, the samples must be obtained within 60 days of the end of the insurance period. However, insurance providers often have little control over when the actual grading is completed because state/federal graders do the actual grading of the samples. The commenters stated that it is possible with a wide spread loss situation, the state/federal graders would not be able to complete the grading within 21 days of sampling, and the growers should not be penalized if this is the case. The commenters stated that there should be some flexibility built into this 21-day grading period.

Response: The proposed policy for 1998 included a 7-day grading period. The comments received for that proposed rule requested a longer time-period. FCIC granted a 21-day time-period in final rule. The longer time-period was provided to give flexibility to complete the grading process. In addition, since the provision added to the policy in 1998, FCIC is not aware of any instances where the 21-day grading period has proven to be inadequate as a result of wide-spread losses. No change has been made.

Comment: A few commenters stated that under proposed section 11(e)(3) it does not make sense for the basic policy to state, ''Prior to any quality adjustment, you notify us of the intended use of the potatoes so the applicable United States Standards will be applied.'' The standards that apply should be based on the quality option the grower purchased.

Response: In some cases, it may not be evident which standards should apply based on the options a producer purchased. A producer who purchased the Northern Potato Crop Insurance Quality Option may grow for the processing french fry market, and another producer who elected the same endorsement may grow for the chipping market. In order to apply the proper standard, a producer must notify the insurance provider of the intended use. No change has been made.

Comment: A few commenters stated the phrase, ''Prior to any quality adjustment, you must notify us of the intended use * * *'' in proposed section 11(e)(3) makes it sound as though the insured is the one doing the quality adjustment. The commenters also recommended changing ''* * * the applicable United States Standards will be applied'' to ''* * * the appropriate United States Standards will be applied'' to avoid having ''applicable'' and ''applied'' in the same phrase, or alternatively, ''* * * the United States Standards will be applied according to the definition of ''grade inspection''.

Response: The commenter is correct that the term ''applicable'' should be changed to ''appropriate'' and has revised the provision accordingly. FCIC is not sure how the provision indicates the producer is performing quality adjustment. The provision only specifies the time frame by which the producer must provide notice of the intended use of the potatoes so the appropriate grading standards can be used. The definition of ''grade inspection'' makes it clear who will be conducting the quality adjustment.

Comment: A few commenters requested section 11(f) be revised to state: ''Potato production to count that is eligible for quality adjustment * * *'' The change should be made in section 11(f) since the first two phrases in proposed section 11(g) and section 11(f) are identical otherwise.

Response: FCIC agrees with the commenters. Although not in proposed rule, this is simply a conforming amendment required for section 11(f) to be consistent with the changes in proposed section 11(g) since both provisions were otherwise identical.

Comment: A few commenters requested that, under proposed sections 11(g)(1) and (2), FCIC consider if the various references in these subsections to ''(60 days after the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable)'' and two references to ''(61 or more days * * *)'' could be moved to the Storage Coverage Endorsement. That endorsement has the different deadline and is of interest only to those who take that endorsement. The commenters stated that the remaining provisions in the Northern Potato Crop Insurance Provisions would be easier to read without these parenthetical interjections. Also, it would help to be consistent in referring either to ''the end of insurance period'' or ''the end of the insurance period'' throughout.

Response: Proposed section 11(g) provides the manner in which quality adjustment will be conducted under the policy. The Northern Potato Crop Insurance Storage Coverage Endorsement does not change this calculation. It only adjusts the time frame. Therefore, if FCIC were to

remove the parentheticals, it would have to repeat the calculations in each of the applicable endorsements which would increase their complexity and could result in potential conflicts. FCIC agrees that the references to the end of the insurance period should be the same and has changed the references throughout the Crop Provisions and Endorsements to specify the ''end of the insurance period.''

Comment: A few commenters asked what is meant by the statement ''* * * Dividing the price that is received, or will be received * * *'' in proposed section 11(g)(2)(i)(A). Oftentimes the crop is put into storage and it will be up to ten months before the crop is sold. The commenters asked whether this means the insurance provider should hold the claim open until the crop is actually sold. The commenters stated that, with the volatility inherent in potato pricing, insurance providers cannot be expected to know what price will be received 10 months after harvest, and they cannot use a local market price because that price will not reflect the damage of the specific insured's crop. If insurance providers wait until the potatoes are pulled out of storage and sold, it will be almost impossible to correlate production in the cellar with sold production as there will be shrinkage and rot showing up in storage and the packing shed or processor will likely blend between units before providing price and production information. The commenters stated that the language that states the amount of production will be the greater of the amount determined off the charts or the salvage value based on the price that will be received will be impossible to administer.

Response: There have been problems in the past where the actual amount of production sold exceeded the amount of production used to determine the claim. FCIC has a responsibility to ensure that producers only receive the amount of indemnity to which they are entitled. Since the amount of production to count is adjusted based on the price received for the damaged production, the insurance provider must establish the value of the damaged production based on the sales records when the crop is sold. However, the use of the phrase ''will be received'' allows adjustment if the producer and purchaser can agree on a price even if the purchaser has not paid for the crop yet. This will minimize any delays in the loss adjustment process. FCIC understands the amount of production sold and the amount in storage at the end of the insurance period may not be the same because there will be some production loss resulting from shrinkage, etc. However, the loss will be based on the amount of production determined in accordance with section 11. The sales records will only be used to establish the price of damaged production for the purposes of quality adjustment.

Comment: A commenter stated that the potato industry and grower groups have concerns with proposed section 11(g)(2)(ii) because combining the charts is difficult or possibly not workable due to the dramatic difference in the causation and temporal impacts of damage from events as different as freeze and rot. The commenter stated that it was not able to determine the effect of this change on coverage as there are different types of damages and the proposed chart, which details the changes and damages, is not published with this proposed rule. The commenter asked for an opportunity for discussion with FCIC regarding a single chart to handle these issues.

Response: FCIC combined the adjustments for tuber rot and freeze damage to adequately reflect the value lost due to soft rot and freeze and to ease the administration of the quality adjustment provisions. The adjustment factors were included in proposed section 11(g)(2)(ii)(A) so any interested party could determine the effects of the changes on coverage. FCIC has determined that although the causes are dissimilar, the amount of damage and effect of the damage is sufficiently similar that it made sense to combine these causes into one table to ease the administration of the policy, especially in cases where both causes of loss may have occurred.

Comment: A commenter stated: that the current policy allows producers the opportunity to market potatoes even when a qualifying loss exists. The producer is allowed to accept 85 percent of the indemnity and continue to market the crop. This has been a positive aspect to growers motivated to perform in the market and positive to FCIC by reducing the percent of indemnity paid. The commenter states that the proposed changes would remove the capability of a grower to market the production while receiving a smaller indemnity. The commenter stated that the cost of the program will increase as producers maximize their indemnity and destroy the production. The production to count will decrease, as will their APH and therefore their ability to properly insure in the future. The commenter also stated that the proposed rule creates timeline limitations that may be unrealistic to the grower's normal market channels and delivery period.

Response: In some cases, under current quality adjustment provisions, producers sold more production than the amount used to determine the production to count. For example, the previous provision provided that only 15 percent of production would be production to count when 10.4 percent of the production had tuber rot and production was retained by the producer for more than 60 days after the end of the insurance period. This represented a vulnerability in the program because FCIC only has the authority to pay for actual production losses. In cases where only 15 percent of production is production to count, the resulting indemnity payment represents a significant loss of the crop. If the producer is also able to market the same production for fair market value, the producer is receiving both an indemnity payment and market value on the same production. In order to reduce this vulnerability, a change has to be made in the policy provisions for quality adjustment procedures. Now producers will be paid an indemnity based on the actual production to count determined from the price received for sold production or the price agreed to between the producer and the purchaser for production to be sold in the future instead of the assignment of a set amount of production to count. FCIC is unaware of any timeline limitations caused by this change. Producers may still market their crop at any time.

Comment: A few commenters commented on the prevented planting provisions in section 13. The commenters stated that they recommend eliminating the option to increase prevented planting coverage levels (in the second sentence) and that FCIC review the amount that is being paid for prevented planting purposes. The commenters stated that the 25 percent payment rate may be excessive for potatoes. The commenters stated that if this sentence is retained, the reference to ''* * * limited or additional coverage * * * should be updated to ''* * * additional coverage * * *''

Response: Since no changes to this section were proposed to section 13, the recommended changes would be substantive in nature and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Northern Potato Crop Insurance Quality Endorsement

Comment: A few commenters recommended removing the references to different deadlines in proposed

sections 5(a)(1) and (2) and sections 6(a) and (b), if the Storage Coverage Endorsement is elected in accordance with the comments provided to proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions.

Response: As stated above in response to the same suggestion for proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions, this change would add complexity to the Northern Potato Crop Insurance Storage Coverage Endorsement and would not improve clarity. No change has been made.

Comment: A few commenters recommended FCIC minimize the repeated phrases in proposed section 5(a)(1) and in equivalent subsections of the Northern Potato Crop Provisions. The commenters recommend stating ''For potatoes for which a price is agreed upon between you and a buyer, or that are delivered to a buyer with 21 days * * *''. Additional comments were received regarding proposed section 5(a)(2)(i)(A). The commenters indicated if a price has not been agreed upon, it will not be possible for insurance providers to know what price ''will be received'' unless they wait to finalize the claim until the production has been sold.

Response: As stated above, it would be more confusing and add more complexity to the Northern Potato Crop Insurance Quality Endorsement if the provisions were moved. As stated above, claims will have to remain open until production is sold or a price is agreed upon between the producer and the purchaser. No change has been made.

Northern Potato Crop Insurance Processing Quality Endorsement

Comment: A few commenters recommended removal of the proposed definition of ''percentage factor'' since it is also included in the Northern Potato Crop Insurance Quality Endorsement. Proposed section 2(a) states that this endorsement also requires that the Northern Potato Crop Insurance Quality Endorsement be in effect. Therefore, there is no need to have this definition in the Northern Potato Crop Insurance Processing Quality Endorsement as well.

Response: To avoid any potential conflicts, there should only be one definition of a term in the policy documents unless exceptions are being made. However, to enable the producer to locate the definition, FCIC is including a cross reference to the definition in the Northern Potato Quality Endorsement.

Comment: A commenter inquired about proposed section 2(b)(1), which requires a copy of the processor contract to be submitted on or before the acreage reporting date. The commenter is concerned the contract may not be immediately available so as to comply with this provision. In recent years, contract negotiations have continued into the planting season as a tactic to force growers into completing the negotiation process. Therefore, the commenter states that there is a need for a flexible time line for providing the contract to FCIC.

Response: Since the acreage reporting date is well after the final planting date, most contracts should be executed by the acreage reporting date. Additionally, since insurance under the Northern Potato Crop Insurance Processing Quality Endorsement is only provided for acreage grown under contract, the producer must know by the acreage reporting date the acres that can be reported for insurance under the endorsement. No change has been made.

Comment: A commenter asked about proposed section 5(b), which states that the number of acres insured under the endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract. However, proposed section 5(a) states all production of this type of potato must be covered. The commenter stated that excluding a small percentage of the production, as in proposed section 5(b), is contradictory to proposed section 5(a). As matter of production efficiency growers will generally complete the planting of a tract of land, particularly under irrigated conditions, which may create an uninsured portion of the field/crop. Processors generally purchase the ''overrun'' production from these small portions of the crop. The commenter stated that making them ineligible to be covered based on contract volume will reduce participation under the endorsement, reduce premium, and may worsen the loss ratio for this endorsement.

Response: FCIC has revised the provision to indicate all acreage will be insurable unless the number of acres planted exceeds the amount necessary to fulfill the contract. In that case, the excess amount of acres will be insured under the Northern Potato Crop Insurance Quality Endorsement. FCIC expects the number of acres not covered under the processing endorsement will be minimal and will not impact program participation. Additionally, the acres not covered under the processing endorsement will still be covered under the quality endorsement.

Comment: A commenter expressed concern in proposed section 6(a) regarding the requirement for production to be rejected by the processor. The commenter stated the problem that potatoes cannot be adjusted for quality if the potatoes are not rejected and there are occasions where the quality deficiencies (i.e., specific gravity, fry color and sugar ends, and other internal quality problems) result in a reduction of the contract price the grower receives from the buyer, not rejection. As a result, some growers are being docked by the buyer for these deficiencies but cannot receive an indemnity payment. The requirement for a letter of rejection from the processor is not fair and essentially denies the farmer his/her right of ownership of the potatoes and the right to receive indemnity payments from the policy.

Response: FCIC has clarified section 6 of the Northern Potato Crop Insurance Processing Quality Endorsement to state potatoes valued less than the maximum price election because they do not meet the quality standards in the endorsement may qualify for quality adjustment. FCIC has also separated out the provisions that determine the circumstances that must occur before the potatoes are eligible for a quality adjustment from the actual quality standards and added a new section 7 for clarity and ease of reading. Now the provisions will allow quality adjustment for potatoes that have been rejected by the processor as well as those that have been discounted below the base contract price (and valued less than the maximum price election) because they do not meet any of the standards in redesignated sections 7(a) through (d).

Comment: A few commenters recommended including a definition for ''rejected'' under section 1 because most processors have a sliding scale for pricing that includes bonuses for premium quality and reductions for less than premium quality. For example, even though the processor payment is based on number two grade, the contract may provide for a bonus if there are greater than 40 percent number one grade potatoes, and they may reduce the base price if there are less than 40 percent number one potatoes in the lot. The commenters stated that there is confusion about whether to use the salvage value if the potatoes receive less than the base price. The commenters stated that FCIC has provided clarification on this issue, and the adjustment only kicks in when the potatoes are rejected. To be considered rejected, the potatoes must be below the minimum standards, and the growers

must be released from their contract. The commenters state that the clarification provided by FCIC needs to be incorporated into the policy. Oftentimes the processor will reject the potatoes for being below the minimum standards in the contract and then buy them back. This is an acceptable practice and the adjustment should apply since the potatoes are released and a new contract is negotiated. The commenters recommended ''rejected'' be defined as not acceptable based on the minimum standards in the contract.

Response: Clarification is needed with respect to production to count for potatoes failing to meet the quality standards. To address this issue, FCIC has revised the language to remove the reference to rejection and include adjustments to production to count when potatoes are valued less than the maximum price election for failure to meet the quality standards in redesignated section 7.

Comment: A few commenters stated proposed sections 6(a) and (b) are so lengthy they are difficult to follow. A thorough revision could be difficult and time-consuming, but a few small changes might help somewhat. The commenters recommended removing some of the multiple references to ''the production to count * * * will be determined'' and similar phrases. In addition, proposed sections 6(a)(1) and (2) could begin ''If a price. * * *'' instead of ''For potatoes for which a price. * * *''

Response: FCIC has revised the proposed provision to eliminate duplication. The proposed sections 6(a) and (b) have been separated into redesignated sections 6, 7 and 8 to make them easier to read and to reduce redundancy. Clarifications have also been made in redesignated sections 8(a) and (b) to make them easier to read.

Comment: A few commenters objected to the language in proposed section 6(a)(2)(i)(A) referring to the ''price that is received, or will be received.'' The commenters state that the old language is preferable. The old language said if a price is not received or agreed upon in writing, production to count will be determined in accordance with the Northern Potato Crop Insurance Quality Endorsement. The commenters stated that this new language is really confusing (see comments above for section 11(g)(2)(i)(A) of the Northern Potato Crop Provision).

Response: As stated above, claims cannot be finalized until after a price has been determined for damaged production. The provision states ''received'' or ''will be received'' because a price may have been settled on, but the actual financial transaction may not yet have taken place. In cases where there is no price received and there is no agreed upon price, the claim must remain open until the price is known.

Comment: A few commented on proposed sections 6 and 7, regarding the possibility of moving the references to different deadlines if the Northern Potato Crop Insurance Storage Endorsement is elected. The commenter referred to the comments provided to proposed sections 11(g)(1) and (2) of the Northern Potato Crop Provisions and proposed section 5(a)(1) and (2) and 6(a) and (b) of the Northern Potato Crop Insurance Quality Endorsement.

Response: As stated above, moving the deadlines will not improve clarity and will add complexity to the other endorsements. No change has been made.

Comment: A few commented regarding proposed section 8 (redesignated section 9) and asked FCIC to consider moving instructions for determining any quality adjustment to section 6 or possibly put into a definition of ''U.S. Standards,'' as suggested for the Northern Potato Crop Provisions above. Proposed section 8 states (redesignated section 9) ''all quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or Chipping.''

Response: It is not practical to put the definition of such standards because they are not determined by FCIC and the policy must be able to quickly adjust to any changes made to the standards by the applicable government agency. Therefore, the policy contains a reference to the standards that are used. However, redesignated section 9 has been changed to include United States Standards for Grades of Potatoes for Processing or the United States Standards for Grades of Potatoes for Chipping.

Comment: A few commented regarding proposed section 9 (redesignated section 10). The commenters question whether the changes are necessary and asked if the statements in the actuarial documents also will be revised to ''U.S. No. 1 grade'' and ''U.S. No. 2 grade''. This same change was not made in section 10 of the Northern Potato Crop Insurance Quality Endorsement.

Response: FCIC made changes for clarification purposes and will make the same changes in the section 10 of the Northern Potato Crop Insurance Quality Endorsement, as well as the actuarial documents.

Potato Crop Insurance Certified Seed Endorsement

Comment: A few commenters had concerns with provision proposed in section 1 that stated ''Any additional premium paid for coverage under the Northern Potato Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement''. The commenters are concerned that while the Background explanation in the proposed rule makes it clear the Northern Potato Crop Insurance Certified Seed Endorsement extends the time-period to discover damage beyond harvest that results from a cause of loss that occurred during the insurance period, the actual endorsement does not make this clear. The commenters point out that section 8 stated, ''Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions.'' The commenters also stated that there should be something in the Northern Potato Crop Insurance Certified Seed Endorsement that overrides section 14(c) of the Basic Provisions, which states you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period unless you request an extension in writing. The commenters stated that the section references in redesignated sections 4 and 7 needs to be revised as well.

Response: Although notification of failure to make certified seed can occur after the end of the insurance period, the damage and insured cause of loss must occur within the insurance period. FCIC has revised the provision to make it clear that the insurance period under this endorsement has not been extended. The section references in redesignated sections 4 and 7 should be corrected and FCIC has done so. Redesignated section 8 was also revised to clarify the time-period for the producer to submit any claim.

Northern Potato Storage Coverage Endorsement

Comment: A commenter requested that sub-lethal freeze become an insurable cause of loss under the Northern Potato Crop Insurance Storage Coverage Endorsement. The commenter further stated that freeze should be covered in storage. Sub-lethal freezing does not show up during harvest, and can be confused with soft rot by graders who are grading potatoes under the storage coverage. The commenter recommends the freeze damage that was

not apparent at harvest, but becomes apparent in storage be covered under the Northern Potato Crop Insurance Storage Coverage Endorsement and the storage coverage rates increased accordingly to cover this risk.

Response: Freeze damage that occurs in the field is apparent at harvest and there is no need to extend discovery period for freeze. According to industry experts sub lethal freeze can also be detected at harvest. If the tuber is cut open, it will brown much faster than a tuber that is not damaged. Therefore, to the extent this damage can be detected at harvest it would be covered as freeze damage. No change has been made.

Comment: A few commenters had concerns with proposed section 5(c)(2) and recommended allowing some flexibility regarding the 21-day grading period because it is possible state or federal graders will not be able to complete grading within this time period.

Response: The proposed policy for 1998 included a 7-day time-period. In response to requests at that time to extend the time-period, a 21-day period was granted. The longer time-period was provided to give flexibility to complete the grading process. Since it is unlikely that all of the sampling will take place at the same time, the grading time-period of 21 days should not be a hindrance. In addition, FCIC is not aware of any problems with the grading time-period and, therefore, does not see a need to extend the time allotment. No change has been made.

Comment: A few commenters were in favor of reducing the storage period. Proposed sections 11(g)(1) and (2) of the Northern Potato Crop Insurance Provisions, and the Northern Potato Crop Insurance Storage Coverage Endorsement require samples to be obtained within 60 days of the end of insurance period. However, FCIC notes on page 42764 of the Proposed Rule that, ''several potato industry experts state that virtually all damage that occurs within the insurance period will become apparent within 45 days after production is harvested''. Based on this, the commenters recommended the time-period be reduced from the current 60 days to 45 days.

Response: While FCIC has revised the provision to be more clear, FCIC has not proposed to revise the 60-day period for discovery of damage that occurred during the insurance period. Since a change in the discovery period would be a substantive change and the public was not provided an opportunity to comment, FCIC cannot make the recommended change.

Comment: A comment was received stating that FCIC is incorrect when it concluded that no extension of the 60 day storage coverage period was necessary because ''several potato industry experts state virtually all damage that occurs within the covered insurance period will become apparent within 45 days after production is harvested.'' The commenter stated that the findings from this review actually present the contrary result and are exactly why the coverage is needed. Problems occur in storage that are caused by problems that occurred in the field that may be unrecognizable at harvest. With today's improved technology and storage capabilities, field problems may not display themselves until a later time. Differences in production, storage, and management cannot ensure that virtually all damage will become apparent within 45 days of harvest. It is impossible to predict with 100 percent certainty how each crop will react when put into storage.

Response: It is possible that it may take longer than 45 days to discover all possible damage that occurred during the insurance period. FCIC did not propose to reduce the period to 45 days for this reason. At the request of producers, RMA reviewed the storage coverage issue in detail and determined the current provision of the 60-day discovery period is sufficient. FCIC did not discover any evidence of any damage that cannot be discovered within the current 60 day period. No change has been made.

Central and Southern Potato Crop Insurance Provisions

Comment: A few commenters stated that with the addition of the text ''and any other states or counties if allowed by the Special Provisions'', it will need to be made clear in the Special Provisions whether the specific state and county is covered under the Central and Southern Potato Crop Insurance Provisions.

Response: Once the final rule is published, any additional states or counties to be included under the Central and Southern Potato Crop Insurance Provisions will be specified in the appropriate Special Provisions.

Comment: A commenter provided the same comments they did to the Northern Potato Insurance Crop Provisions regarding the definition of ''grade inspection'', ''unit division'', the increase in price election from 80 percent to 90 percent for unharvested acreage, and naturally occurring causes of loss.

Response: FCIC reiterates its responses here and to the extent that it has made changes in the Northern Potato Crop Insurance Provisions, the same changes will be made to the Central and Southern Potato Crop Insurance Provisions.

Comment: A few commented regarding proposed section 4(c). The commenters did not think it is necessary to add a fourth contract change date for the states and counties covered under the Central and Southern Potato Crop Insurance Provisions. Even if a fifth cancellation/termination date is deemed necessary, as proposed in section 5, the states with the new January 31 cancellation/termination date could stay under the September 30 contract change date, with the states/counties with a cancellation/termination date of November 30 or December 31.

Response: The commenter is correct and the states and counties covered under the cancellation and termination date of January 31 will remain under the September 30 contract change date.

Comment: A few commenters stated that they do not think that the states of Delaware, Maryland, New Jersey, North Carolina and Virginia need to have a cancellation/termination date of January 31, but should continue to be included under the December 31 date.

Response: This change was requested from interested parties who felt that January 31 would more accurately reflect the growing conditions in those areas. FCIC reviewed the request and determined that the January 31 date was more appropriate.

Comment: A few commenters had concerns with proposed section 10(b)(1). The commenters asked FCIC to consider revising the last phrase from ''* * * occurs after potatoes have been placed in storage'' to ''* * * occurs or becomes evident in storage'' to match the earlier phrase and to match the Northern Potato Crop Insurance Provisions.

Response: FCIC changed the provision accordingly.

Comment: A comment was received regarding section 12(d)(1)(iv). The commenter stated it appears there should be reference made to section 12(e) within this section because unharvested, appraised production is also determined based on section 12(e).

Response: FCIC is not clear what is meant by this comment. Reference is already made to section 12(e) in section 12(d)(1)(iv). No change has been made.

Comment: A few commenters had concern regarding section 12(d)(1)(iv)–(v). The commenter asked if these provisions should be revised as proposed in the Northern Potato Crop

Insurance Provisions (i.e., reworded and combined into one).

Response: Both the Northern Potato Crop Insurance Provisions and the Central and Southern Potato Crop Insurance Provisions should have the consistent language where it is appropriate and feasible to do so. Section 12(d)(iv) will be revised and section 12(d)(v) will be deleted in the Central and Southern Potato Crop Insurance Provisions to be consistent with the language in the Northern Potato Crop Insurance Provisions.

Comment: A comment was received regarding section 12(d)(2). The commenter indicated the language in this subsection is not the same as in the Northern Potato Crop Provisions and recommended that one or both be revised to match. The Central/Southern Crop Insurance Provisions state ''All harvested production from the insurable acreage determined in accordance with section 12(e)(1).'' However, the Northern Crop Insurance Provisions state ''All harvested production from the insurable acreage (the amount of production prior to the sorting or discarding of any production).''

Response: This provision cannot be made consistent. In the Central and Southern Potato Crop Insurance Provisions, only ''marketable lots'' of potatoes are included as production to count. In the Northern Potato Crop Insurance Provisions, all harvested production is counted but can be adjusted for quality deficiencies. No change has been made.

Comment: A comment was received regarding the first paragraph of proposed section 12(e). The commenter recommended removing the phrase ''With the exception of production with external defects''. This sentence currently gives the impression that this section does not pertain to those potatoes that have external defects, which is not accurate. Also, as the proposed rule reads, this section is not specific as to how internal defect determinations are made. The commenters recommend changing proposed section 12(e)(6)(ii) to read ''Does not meet the standards of grading U.S. No. 2 or better on a field run sample due to internal defects; or''. The commenter believes this change would clarify how samples are to be taken to determine quality when internal defects are in question.

Response: Clarification is needed regarding production with external defects. The provisions have been revised to clarify how such production will be handled for claims purposes. Further, section 12(e) specifically requires adjustments to be based on grade inspections, which determine the manner in which samples are to be taken. Therefore, the recommended change is not necessary.

Comment: A comment was received regarding proposed section 12(e)(1). The commenter disagreed with the revised text and recommend retaining the provision currently being used. The revised text now allows a determination of practical to separate production for unharvested production. This should not be allowed as unharvested production can always be separated.

Response: Only those potatoes not grading U.S. No. 2 due to external defects are eligible for an adjustment. It does not matter whether the acreage is harvested or not. Further, the determination of whether it is practical to separate production is not dependent upon whether production is harvested or unharvested. The ability to separate production depends on the kind of damage that occurred and the method available to separate the damaged production. No change has been made.

Comment: A question was asked regarding proposed section 12(e)(3). The commenter asked if there is any concern in the situation where a grade inspection must be made for unharvested, appraised production, the insured will always state his/her intended use will be the use that provides the most favorable grading standards for the insured. The producer will not be harvesting the production and the true intended use will not be known.

Response: There is some concern the producer may specify the most favorable standard. However, given the fact a standard must be used to grade the potatoes, a standard must be identified. Every attempt should be made to use the most appropriate standard. For example, the type of potato produced could determine the standard used. If the type is for multiple uses and there is concern about which standard to apply, the insurance provider can ask for previous records and make a determination based on previous production history. The provision has been revised accordingly. FCIC has also similarly revised the Northern Potato Crop Insurance Provisions.

Comment: A comment was received regarding proposed section 12(e)(3). The commenter suggested the text requiring the insured to indicate the intended use prior to a grade inspection included in section 11 (Duties in the Event of Damage or Loss).

Response: The placement of the provision under section 11, Duties in the Event of a Loss, does not substantially improve or clarify the provision. No change has been made.

Comment: A few commented regarding the prevented planting provisions. The commenters recommend eliminating the option to increase prevented planting coverage levels (in the second sentence), as well as reviewing the amount that is being paid for prevented planting purposes (the 25 percent payment rate may be excessive for potatoes). However, if this sentence is retained, the reference to ''* * * limited or additional coverage * * *'' should be updated to ''* * * additional coverage * * *''

Response: Since no changes to this section were proposed, the recommended changes are substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and the following changes:

1. In all policies, standardized the references to the ''Northern Potato Crop Provisions,'' ''Northern Potato Quality Endorsement,'' ''Northern Potato Processing Quality Endorsement,'' ''Potato Certified Seed Endorsement,'' and ''Northern Potato Storage Coverage Endorsement.''

Northern Potato Crop Insurance Provisions (§ 457.142)

1. Revise the definition of ''grade inspection'' to include a standard ''for all other potatoes, The United States for Grades of Potatoes'' and to include the ''United States Standards of Potatoes for Seed''. This change is needed to recognize the separate U.S. quality standard for grading seed potatoes.

2. Revise the end of the insurance period in Kansas to October 25.

Potato Crop Insurance Certified Seed Endorsement (§ 457.145)

1. Corrected the citation in redesignated section 3 by replacing the number 5 with the number 4.

2. Amend redesignated section 4 by adding paragraphs (a) and (b). These provisions were inadvertently omitted in the previous version.

Central and Southern Potato Crop Insurance Provisions (§ 457.147)

1. Correct the spelling of ''Gains'' to Gaines County, Texas in section 9(e).

2. Amend section 9 by revising paragraphs (a) through (e) and adding a new paragraph (f) to change the end of insurance dates for North Carolina and Virginia. Requests were received from

state agriculture agencies and state extension personnel to extend the end of the insurance period in these states. According to industry experts, changes in cultural practices have extended harvesting past the current dates. Therefore, certain varieties will require the extension of the end of the insurance period so adequate insurance protection can be offered. Although this information was received after the proposed rule was published, this change would give the producers sufficient time to complete harvest without going beyond the insurance period.

List of Subjects in 7 CFR Part 457

Crop insurance, Potatoes, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2008 and succeeding crop years for the Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, and the Northern Potato Crop Insurance Storage Coverage Endorsement. The Central and Southern Potato Crop Insurance Provisions changes will apply for the 2009 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

■ 2. Amend § 457.142 as follows:
■ a. Revise the introductory text;
■ b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Northern Potato Crop Provisions'' and before section 1;
■ c. Amend section 1 by revising the definitions of ''Certified seed'' and ''Grade inspection'', adding the definition of ''Potato certified seed program'', and removing the definitions of ''Processor contract'' and ''Reduction percentage'';
■ d. Amend section 2 by revising paragraphs (b) and (c);
■ e. Amend section 8 by revising paragraphs (d) and (e), and adding a new paragraph(f); and
■ f. Amend section 11 as follows:
■ A. Revise paragraph (b)(7);
■ B. Remove paragraph (d)(1)(iv), redesignate paragraph (d)(1)(v) as (d)(1)(iv) and revise newly redesignated paragraph (d)(1)(iv) introductory text;
■ C. Revise paragraph (e)(2);
■ D. Add new paragraph (e)(3);
■ E. Revise paragraph (f);
■ F. Revise paragraph (g); and
■ G. Remove paragraph (h).

The added and revised text reads as follows:

§ 457.142 Northern potato crop insurance provisions.

The Northern Potato Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Kansas; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; San Juan County, New Mexico; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming; and any other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election. This requirement is not applicable to the certified seed endorsement price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will also receive the price election for unharvested acreage.

* * * * *

8. Insurance Period

* * * * *

(d) October 20 in Maine;

(e) October 25 in Kansas; and

(f) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; San Juan County, New Mexico; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iv) Unharvested production, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 11(e), (f), and (g); and the value of all unharvested production will be calculated using the reduced price election determined in section 2(b). If agreement on the appraised amount of production is not reached:

* * * * *

(e) * * *

(2) A grade inspection is completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable, samples must be obtained within 60 days after the end of the insurance period and quality (grade) determinations must be completed with 21 days of sampling); and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States standards will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(f) Potato production to count that is eligible for quality adjustment, as specified in section 11(e), with 5 percent damage or less (by weight) will be adjusted 0.1 percent for each 0.1 percent of damage through 5.0 percent.

(g) Potato production to count that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be determined as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage endorsement is applicable), after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(i) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Storage Coverage Endorsement is applicable) after the end of the insurance period, and that remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 11(g)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined by:

(A) Reducing any harvested or appraised production:

(*1*) By 0.1 percent for each 0.1 percent damage through 5.0 percent;

(*2*) By 0.5 percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) By 1.0 percent for each 0.1 percent of damage from 6.1 through 13.5 percent; or

(B) Including 15 percent of the production when damage is in excess of 13.5 percent.

(iii) For any production discarded:

(A) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(*1*) Zero if we determine the production could not have been sold; or

(*2*) Determined in accordance with section 11(g)(2)(ii) if we determine the production could have been sold; or

(B) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 11(g)(2)(ii).

* * * * *

■ 3. Amend § 457.143 as follows:

■ a. Revise introductory text;

■ b. Remove section 9 and redesignate sections 5 through 8 as 7 through 10;

■ c. Redesignate sections 1 through 4, as sections 2 through 5, and add new section 1;

■ d. Revise redesignated section 5;

■ e. Add new section 6; and

■ f. Revise redesignated section 10.

The revised and added text read as follows:

§ 457.143 Northern potato crop insurance—quality endorsement.

The Northern Potato Crop Insurance Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. Definitions

Percentage factor. The historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than 4 years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions so that such a combination would be the functional equivalent of 4 years of records.

* * * * *

5. We will adjust the production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions for potatoes that do not meet U.S. No. 2 grade requirements from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection due to:

(a) Internal defects as long as the number of potatoes with such defects are in excess of the tolerances allowed for the U.S. No. 2 grade potatoes on a lot basis and are not separable from undamaged production using methods used by the packers or processors to whom you normally deliver your potato production as follows:

(1) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, the amount of production will be determined by (adjustment under section 5(a)(1) or 5(a)(2)(i) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, and the potatoes remain in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(i) The amount of production determined by:

(A) Dividing the price per hundredweight that is received, or will be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 5(a)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(ii) The amount of production determined as follows:

(A) The combined weight of sampled potatoes grading U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 will be based on a grade inspection completed no later than 21 days after the end of the insurance period (if the Northern Potato Storage Coverage Endorsement is applicable), samples must be obtained within 60 days after the end of the insurance period and a grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(B) The percentage determined in section 5(a)(2)(ii)(A) will be divided by the applicable percentage factor; and

(C) The result of section 5(a)(2)(ii)(B) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(b) Factors other than those specified in section 5(a), in accordance with section 5(a)(2)(ii).

6. For any production that qualifies for adjustment in accordance with section 5(a) and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 5(a)(2)(ii) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 5(a)(2)(ii).

* * * * *

10. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement.

(a) If both U.S. No.1 and U.S. No. 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

(b) If both fresh and processing types are specified in the actuarial documents, you cannot elect the fresh type for any potatoes grown for processing or chipping.

■ 4. Revise § 457.144 to read as follows:

§ 457.144 Northern potato crop insurance—processing quality endorsement.

The Northern Potato Crop Insurance Processing Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

1. Definitions

Broker. Any business enterprise regularly engaged in the buying and selling of processing potatoes, that possesses all licenses and permits as required by the state in which it operates, and when required, has the necessary facilities or the contractual access to such facilities, with enough equipment to accept and transfer processing potatoes to the broker within a reasonable amount of time after harvest or the typical storage period.

Percentage factor. The term as defined in the Northern Potato Quality Endorsement.

Processor. Any business enterprise regularly engaged in processing potatoes for human consumption, that possesses all licenses and permits for processing potatoes required by the state in which

it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process processing potatoes grown under a processing contract within a reasonable amount of time after harvest or the typical storage period.

Processor contract. A written agreement between the producer and processor, or between a producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing potatoes, and to deliver the potato production to the processor or broker;

(b) The processor's or broker's commitment to purchase all the production stated in the processing contract; and

(c) A price or pricing mechanism to determine the value of delivered production.

2. To be eligible for coverage under this endorsement, you must have a:

(a) Northern Potato Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement:

(1) Cancellation of your Northern Potato Quality Endorsement will automatically result in cancellation of this endorsement;

(2) This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date: and

(b) Processor contract executed with a processor or broker for the potato types insured under this endorsement that is applicable for the crop year:

(1) A copy of the processor contract must be submitted to us on or before the acreage reporting date for potatoes; and

(2) Failure to timely provide the processor contract will result in no coverage under this endorsement and coverage will be provided only under the terms of the Northern Potato Crop Provisions and Northern Potato Quality Endorsement.

3. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Northern Potato Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Northern Potato Quality Endorsement and this endorsement, this endorsement will control.

4. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

5. If you elect this endorsement, all insurable acreage of production under contract with the processor or broker must be insured under this endorsement; however:

(a) When the processor contract requires the processor or broker to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acres will be determined by dividing the stated amount of production by the approved yield for the acreage; and

(b) The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract.

6. Potato lots may be adjusted in accordance with section 8 if such potatoes:

(a) Fail to meet the standards in section 7(a), (b), (c), or (d), or a standard contained in the processor contract, for the same quality factors specified in section 7(a), (b), (c), or (d), if such standard is less stringent;

(b) Have a value less than the maximum price election; and

(c) Fail to meet the applicable standards and are not separable from undamaged production using methods used by processors to whom you normally deliver your potato production.

7. To qualify for a quality reduction under this endorsement, the potatoes must:

(a) Fail to meet the applicable U.S. No. 2 grade requirements due to internal defects as long as the number of potatoes with such defects are in excess of the tolerance allowed for U.S. No. 2 grade potatoes;

(b) Have a specific gravity lower than 1.074;

(c) Have a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(d) Have an Agtron rating lower than 58.

8. In lieu of the provisions contained in section 5 of the Northern Potato Quality Endorsement, production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions, from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection determined in section 10, will be adjusted in accordance with sections 8(a) or 8(b), whichever is applicable, (adjustment under section 8(a) or 8(b)(1) will not be performed if it already has been performed under the terms of section 11(g) of the Northern Potato Crop Provisions):

(a) If a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable) after the end of the insurance period, or the production is delivered to a buyer within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be determined by:

(1) Dividing the price per hundredweight received or that will be received by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (If the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(2) Multiplying the result of section 8(a)(1) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(b) If a price is not agreed upon between you and a buyer and the production is not delivered within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, and the production remains in storage 22 or more days (61 or more days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production will be the greater of:

(1) The amount of production determined by:

(i) Dividing the price per hundredweight that is received, or that will later be received after the end of the applicable insurance period, by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result of section 8(b)(1)(i) (not to exceed 1.0) by the number of hundredweight of sold or to be sold production (We may verify this after the production has actually been sold); or

(2) The amount of production determined as follows:

(i) The combined weight of sampled potatoes that grade U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 or better will be based on a grade

inspection completed no later than 21 days after the end of the insurance period, if the Northern Potato Storage Coverage Endorsement is applicable; samples must be obtained within 60 days after the end of the insurance period and grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(*A*) The percentage determined in section 8(b)(2)(i) will be divided by the applicable percentage factor; and

(B) The result of section 8(b)(2)(i)(A) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(c) The production to count for potatoes that have a value less than the maximum price election due to factors other than those specified in section 7 will be adjusted in accordance with section 8(b)(2).

9. For any production that qualifies for adjustment in accordance with section 7 and that is discarded:

(a) Within 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 8(b)(2) if we determine the production could have been sold; or

(b) Later than 21 days (60 days if the Northern Potato Storage Coverage Endorsement is applicable), after the end of the insurance period, the amount of production to count will be adjusted in accordance with section 8(b)(2).

10. All quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or the United States Standards for Grades of Potatoes for Chipping.

11. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement. If both U.S. No. 1 and 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

■ 5. Amend § 457.145 as follows:
■ a. Revise the introductory text;
■ b. Revise section 1;
■ c. Remove section 2, and redesignate sections 3 through 11 as 2 through 10;
■ d. Amend redesignated section 3 by removing the number ''5'' and replacing it with the number ''4'';
■ e. Amend redesignated section 4 by adding paragraphs 4(a) and 4(b);
■ f. Revise redesignated section 6;
■ g. Amend redesignated section 7 by removing the number ''8'' and replacing it with the number ''7'' each time it appears;
■ h. Revise redesignated section 8; and
■ i. Revise redesignated section 10.

The revised text reads as follows:

§ 457.145 Potato crop insurance—certified seed endorsement.

The Potato Crop Insurance Certified Seed Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In accordance with section 8, since your insurance period is not extended in this endorsement, any additional premium paid for coverage under the Northern Potato Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

* * * * *

4. * * *

(a) Multiply the average number of your acres entered into and passing certification in the potato certified seed program the 3 previous calendar years by 1.25 and divide this result by the number of acres grown by you for certified seed in the current crop year; and

(b) Multiply the result of section 4(a) (not to exceed 1.0) by the production guarantee for certified seed for the current crop year.

* * * * *

6. All potatoes insured for certified seed production must be produced and managed in accordance with the regulations, standards, practices, and procedures required for certification under the potato certified seed program. Any production that does not qualify as certified seed because of varietal mixing or your failure to meet any requirements under the potato certified seed program will be considered as lost due to uninsured causes.

* * * * *

8. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification. Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions. In lieu of the provisions in section 14(c) of the Basic Provisions specifying that any claim for indemnity must be filed not later than 60 days after the end of the insurance period, your claim for indemnity must be filed by the later of:

(a) Sixty (60) days after the end of the insurance period; or

(b) Thirty (30) days after you receive notice from the state certifying agency that production has failed certification.

* * * * *

10. Failure to meet any requirements for seed to be used to produce a subsequent seed crop will not be covered. All the production that meets requirements for certified seed used to produce a commercial crop will be included in production to count.

■ 6. Amend § 457.146 as follows:
■ a. Revise the introductory text; and
■ b. Amend section 5 by revising the introductory text, revising paragraphs (a)(3) and (c) and removing paragraph (d).

The revised text reads as follows:

§ 457.146 Northern potato crop insurance—storage coverage endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

5. In lieu of section 9(b)(1) of the Northern Potato Crop Provisions, the extended coverage provided by this endorsement will be applicable but only if:

(a) * * *

(3) The potatoes damaged by an insurance cause of loss fail to meet any of the following standards or a less stringent standard for the same quality factors specified below, contained in the processor contract, if applicable, (this coverage is applicable only to production covered under the Northern Potato Processing Quality Endorsement):

(i) A specific gravity lower than 1.074;

(ii) A fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or

(iii) An Agtron rating lower than 58.

* * * * *

(b) * * *

(c) The percentage of production with any of the quality deficiencies specified in section 5(a) is determined based on samples obtained no later than 60 days after the end of the insurance period and the potatoes are evaluated and quality (grade) determinations are made

by us, a laboratory approved by us, a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, or us, in accordance with the United States Standards for Grades of Potatoes:

(1) Samples of damaged production must be obtained by us or a party approved by us prior to the sale or disposal of any lot of potatoes; and

(2) If production is not sold or disposed of within 60 days after the end of the insurance period, samples must be obtained within 60 days after the end of the insurance period and a quality (grade) determination must be completed within 21 days of sampling.

* * * * *

■ 7. Amend § 457.147 as follows:

■ a. Revise the introductory text;

■ b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Central and Southern Potato Crop Provisions'' and before section 1;

■ c. Amend section 1 by revising the definition of ''Certified seed'' and ''Grade inspection'', and adding a new definition for ''Potato certified seed program'';

■ d. Amend section 3 by revising paragraphs (b) and (c);

■ e. Amend section 4 by revising paragraph (b);

■ f. Revise section 5;

■ g. Revise section 9;

■ h. Amend section 10 by revising paragraph (b)(1); and

■ i. Amend section 12 as follows:

■ A. Revise paragraph (b)(7);

■ B. Remove paragraph (d)(1)(iv), redesignate paragraph (d)(1)(v) as (d)(1)(iv) and revise newly redesignated paragraph (d)(1)(iv) introductory text; and

■ C. Revise paragraph (e) in its entirety.

The added and revised text read as follows:

§ 457.147 Central and Southern potato crop insurance provisions.

The Central and Southern Potato Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in Alabama; Arizona; all California counties except Humboldt, Modoc, and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; all New Mexico counties except San Juan; North Carolina; Oklahoma; Texas; and Virginia; and other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: For potatoes produced for chipping, the United States Standards for Grades of Potatoes for Chipping; for potatoes produced for processing, the United States Standards for Grades of Potatoes for Processing; for potatoes produced for seed, the United States Standards for Grades of Seed Potatoes; and for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election.

(c) The price election for unharvested acreage will apply to any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally care for the potatoes even if you choose to continue to care for or harvest them. Potatoes that are lifted to the soil surface and not removed from the field will also receive the price election for unharvested acreage.

* * * * *

4. Contract Changes

* * * * *

(b) September 30 preceding the cancellation date for counties with a November 30, December 31, or January 31 cancellation date; and

* * * * *

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Osceola, and Brevard Counties, Florida, and all Florida counties lying south thereof	September 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	November 30.
Alabama; Georgia; Missouri; and All Florida Counties except Pinellas, Hillsborough, Polk, Osceola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	December 31.
Delaware; Maryland; New Jersey; North Carolina; and Virginia	January 31.
Oklahoma; and Haskell and Knox Counties, Texas	February 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum counties, Texas; and all New Mexico counties except San Juan County.	March 15.

* * * * *

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) July 15 in Missouri; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Haskell, Hartley, Knox, Lamb, Parmer, Swisher, and Yoakum.

(b) July 25 in Arizona.

(c) August 15 in North Carolina; Oklahoma; and Haskell and Knox Counties, Texas.

(d) August 31 in Virginia.

(e) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(f) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and all counties in New Mexico except San Juan.

10. Cause of Loss

* * * * *

(b) * * *

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident in storage; or

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 12(b)(6) by your share.

For example: You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(5) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(6) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iv) Unharvested production, including unharvested production on insured acreage you intend to put to another use or abandon, or acreage damaged by insurable causes and for which you cease to provide further care, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 12(e), and the value of all unharvested production will be calculated using the reduced price election determined in section 3(b). If agreement on the appraised amount of production is not reached:

* * * * *

(e) Only marketable lots of mature potatoes will be production to count for loss adjustment purposes, except for production specified in 12(e)(1):

(1) Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual basis for all harvested and unharvested potatoes if we determine it is or would be practical to separate the damaged production;

(2) All determinations must be based upon a grade inspection; and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the appropriate United States Standard will be applied (We may request previous sales records to verify your claimed intended use or base the intended use on the type of potato grown if such potatoes are not usually grown for the intended use you reported).

(4) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lots meet the standards for grading U.S. No. 2 grade or better on a sample basis.

(5) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(6) Unless included in section 12(e)(4) or (5), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Does not meet the standards for grading U.S. No. 2 grade or better due to internal defects; or

(iii) Does not meet the standards for grading U.S. No. 2 grade or better due to external defects, and it is not practical to separate the damaged production.

* * * * *

Signed in Washington, DC on October 23, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–21238 Filed 10–29–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29235; Directorate Identifier 2007–NM–232–AD; Amendment 39–15245; AD 2007–22–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires an inspection to detect discrepancies of the main landing gear (MLG) system, an inspection of the jam nut of the retract actuator of the MLGs to ensure the wire lock is in place and the nut is secured, an inspection of the retract actuator for any signs of corrosion or wear, and applicable related investigative and corrective actions if necessary. This AD also requires submitting an inspection report to Bombardier. This AD results from two reports of collapse of MLGs within a few days of each other. We are issuing this AD to detect and correct potential failure of major components of the MLG assembly and attachments, which could result in the possible collapse of a MLG and consequent damage to the airplane and injury to people or damage to property on the ground.

DATES: This AD becomes effective November 14, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 14, 2007.

We must receive comments on this AD by November 29, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *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:* 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.

For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400 series airplanes. TCCA advises that, on September 9, 2007, a main landing gear (MLG) collapsed on a Bombardier Model DHC–8–400 series airplane during landing, and that two days later on September 11, 2007, another MLG collapsed on a Bombardier Model DHC–8–400 series airplane during landing. It has been determined that the root cause of both MLG failures was a failure of the retract actuator during gear extension. This failure allowed the gear to fall unrestricted with sufficient force to break the over-center drag strut. The reason for the component failure was determined to be caused by internal corrosion of the threads at the rod end of the retract actuator. Potential failure of the major components of the MLG assembly and attachments, if not corrected, could result in the possible collapse of the MLG and consequent damage to the airplane and injury to people or damage to property on the ground.

Relevant Service Information

Bombardier has issued DHC–8 Series 400 Maintenance Requirements Manual (PSM 1–84–7), Part 1 (Maintenance Review Board Report), tasks Z700–03E (left hand) and Z700–04E (right hand). These tasks describe procedures for doing a general visual inspection to detect discrepancies of the left- and right-hand MLG systems.

Bombardier also has issued Repair Drawing (RD) 8/4–32–059, Issue 4, dated September 14, 2007. Bombardier RD 8/4–32–059 refers to Goodrich Service Concession Request SCR 086–07, Revision C, dated September 14, 2007, as an additional source of service information for accomplishing the procedures in the RD. These documents describe procedures for doing an inspection of the retract actuator for any signs of corrosion or wear, and doing applicable corrective actions if necessary, which include adjusting the retracted length of the rod end, torquing the jam nut, installing a wire lock, and lubricating the piston if necessary. These documents also describe procedures for doing a detailed inspection of affected parts for any signs of corrosion or wear, and doing applicable related investigative and corrective actions if necessary. The related investigative actions involve visually inspecting the threads of the piston pin and the thread relief area for evidence of corrosion. The corrective actions include, but are not limited to, removing the wire lock, backing off the jam nut and rod end out of the piston, replacing any discrepant retract actuator or actuator assembly, coating certain parts with a corrosion inhibitor compound, and reworking any corroded threaded area of the piston.

TCCA mandated the RD and Bombardier DHC–8 Series 400 Maintenance Requirements Manual (PSM 1–84–7), Part 1 (Maintenance Review Board Report), tasks Z700–03E (left hand) and Z700–04E (right hand), and issued Canadian airworthiness directive CF–2007–20, dated September 12, 2007, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of this AD

These airplanes are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct potential failure of major components of the MLG assembly and attachments, which could result in the possible collapse of a MLG and consequent damage to the airplane and injury to people or damage to property on the ground. This AD requires doing a general visual inspection to detect discrepancies of the left- and right-hand MLG systems, doing a general visual inspection of the jam nut of the retract actuator of the left- and right-hand MLGs to ensure the wire lock is in place and the nut is secured, doing a detailed

inspection of the retract actuator for any signs of corrosion or wear, and doing applicable related investigative and corrective actions if necessary. This AD also requires reporting the inspection results to Bombardier.

Interim Action

We consider this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the problem, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29235; Directorate Identifier 2007–NM–232–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–22–09 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15245. Docket No. FAA–2007–29235; Directorate Identifier 2007–NM–232–AD.

Effective Date

(a) This AD becomes effective November 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial number 003 and subsequent.

Unsafe Condition

(d) This AD results from two reports of collapse of the main landing gear (MLG) within a few days of each other. We are issuing this AD to detect and correct potential failure of major components of the MLG assembly and attachments, which could result in the possible collapse of the MLG and consequent damage to the airplane and injury to people or damage to property on the ground.

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.

General Visual Inspection of MLG System and Corrective Actions

(f) Before further flight, do a general visual inspection to detect discrepancies of the left- and right-hand MLG system and do all applicable corrective actions, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent). Bombardier DHC–8 Series 400 Maintenance Requirements Manual (PSM 1–84–7), Part 1 (Maintenance Review Board Report), tasks Z700–03E (left hand) and Z700–04E (right hand), is one approved method for accomplishing the general visual inspection.

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.''

General Visual Inspection of the Jam Nut of the Retract Actuator of the MLG and Corrective Actions

(g) Before further flight, do a general visual inspection of the jam nut of the retract actuator of the left- and right-hand MLG to ensure the wire lock is in place and the nut is secured. If the wire lock is not in place or if the jam nut is not secured, before further flight, adjust the retracted length of the rod end, torque the jam nut, install a wire lock, and lubricate the piston, as applicable, in

accordance with Bombardier Repair Drawing (RD) 8/4–32–059, Issue 4, dated September 14, 2007.

Note 2: Bombardier Repair Drawing 8/4–32–059 refers to Goodrich Service Concession Request SCR 086–07, Revision C, dated September 14, 2007 (specifically item 14), as an additional source of service information for adjusting the retracted length of the rod end, torquing the jam nut, installing a wire lock, and lubricating the piston if necessary, as required by paragraph (g) of this AD.

Detailed Inspection of the Retract Actuator of the MLG

(h) For airplanes on which the retract actuator of the MLG, part number 46550–7 or 46550–9, has accumulated 8,000 or more total landings or has been in-service 4 or more years since new as of the effective date of this AD: Before further flight, do a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions, in accordance with Bombardier Repair Drawing 8/4–32–059, Issue 4, dated September 14, 2007.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(i) For airplanes other than those identified in paragraph (h) of this AD with a retract actuator of the MLG, part number 46550–7 or 46550–9: Do a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions, in accordance with Bombardier RD 8/4–32–059, Issue 4, dated September 14, 2007; at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Before the accumulation of 4,000 total landings or 2 years since new, whichever occurs first.

(2) Within 500 flight hours after the effective date of this AD.

Note 4: Bombardier Repair Drawing 8/4–32–059 refers to Goodrich Service Concession Request SCR 086–07, Revision C, dated September 14, 2007, as an additional source of service information for accomplishing the applicable related investigative and corrective actions required by paragraphs (h) and (i) of this AD.

Actions Done in Accordance with Previous Issues of Service Information

(j) Actions done before the effective date of this AD in accordance with Bombardier Repair Drawing 8/4–32–059, Issue 1, dated September 12, 2007; Issue 2, dated September 13, 2007; or Issue 3, dated September 13, 2007; are acceptable for compliance with the corresponding actions specified in paragraphs (g) through (i) of this AD.

Reporting Requirement

(k) Submit a report of any discrepancy found during any inspection required by this AD to the Bombardier Technical Help Desk, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD; telephone (416) 375–4000; fax (416) 375–4539; e-mail: *thd.qseries@aero.bombardier.com*. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 7 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 7 days after the effective date of this AD.

Special Flight Permit

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be inspected (if the operator elects to do so), provided that the procedures and limitations in paragraphs (l)(1) and (l)(2) of this AD are adhered to.

(1) *Flight Crew Limitations and Procedures:*

(i) Ferry flight with gear extended and pinned.

(ii) Landing to be conducted at a minimum descent rate.

(iii) Minimize braking on landing.

(iv) Flight to be conducted in accordance with Section 4.8 of the Aircraft Operating Manual (AOM).

(v) Essential crew only on board.

(vi) Flight in known or forecast icing condition is prohibited.

(2) *Maintenance Procedures:*

(i) Do the general visual inspection required by paragraph (g) of this AD.

(ii) Do the general visual inspections of the stabilizer stay and the hinge points of the MLG for general condition and security, in accordance with Bombardier Q400 All Operator Message 236A, dated September 11, 2007.

(iii) If no discrepancy is detected during the inspections required by paragraph (l)(2)(i) and (l)(2)(ii) of this AD, before further flight, insert the ground lock pins and a wire lock of the MLG in place.

(iv) Ensure the ground lock of the nose landing gear is engaged.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, New York ACO, 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.

Related Information

(n) Canadian airworthiness directive CF–2007–20, dated September 12, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use Bombardier Repair Drawing 8/4–32–059, Issue 4, dated September 14, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21178 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0023; Airspace Docket No. 07–AEA–08]

Establishment of Class E Airspace; Muncy, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Muncy, PA, to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Muncy Valley Hospital (7PS5), Muncy, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2007.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket No. FAA–2007–0023; Airspace Docket No. 07–AEA–08, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0023; Airspace Docket No. 07–AEA–08.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Muncy, PA establishing the required controlled airspace to support the new RNAV (GSP) helicopter Point in Space (PinS) approach at Muncy Valley Hospital. A new Copter RNAV (GPS) 240 Point in Space (PinS) Special IAP serving the Muncy valley Hospital has been developed. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to contain the IAP and for Instrument Flight Rule (IFR) operations to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 Airspace at Muncy, PA. The controlled airspace around Muncy does not adequately encompass the airspace needed for this new approach. This action provides that required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Muncy Valley Hospital, Muncy, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA PA E5 Muncy, PA [New]

Muncy Valley Hospital, PA

Point in Space Coordinates

(Lat. 41°13′05″ N., long. 76°45′46″ W.)

That airspace within a 6-mile radius of the point in space (lat. 41°13′05″ N., long. 76°45′46″ W.) serving the Muncy Valley Hospital.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5324 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29375; Airspace Docket No. 07–AEA–06]

Amendment of Class E Airspace; State College, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E Airspace at State College, PA to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Centre Community Hospital (PS57), State College, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2007.

ADDRESSES: Send comments on this rule to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket No. FAA–2007–29375; Airspace Docket No. 07–AEA–06, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29375; Airspace Docket No. 07–AEA–06.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at State College, PA establishing the additionally required controlled airspace to support the new RNAV helicopter Point in Space (PinS) approach at Centre Community Hospital. A new Copter RNAV (GPS) 234 Point in Space (PinS) Special IAP serving the Centre Community Hospital has been developed. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass the IAP and for Instrument Flight Rule (IFR) operations, therefore,

the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish additional Class E5 Airspace at State College, PA. The current E5 airspace at State College does not provide adequate airspace for this new approach. This action provides the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Centre Community Hospital, State College, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA PA E5 State College, PA [Amended]

University Park Airport, State College, PA
(Lat. 40°50′56″ N., long 77°50′58″ W.)

PENUE NDB

(Lat. 40°54′37″ N., long. 77°44′30″ W.)

Centre Community Hospital, State College, PA

Point in Space Coordinates

(Lat. 40°49′14″ N., long 77°49′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of University Park Airport and within 3.1 miles each side of the University Park Airport ILS Runway 24 localizer course extending from the PENUE NDB to 9.2 miles northeast of the NDB; and that airspace within a 6-mile radius of the point in space (lat. 40°49′14″ N., long. 77°49′44″ W.) serving the Centre Community Hospital.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5325 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29264; Airspace Docket No. 07–AEA–04]

Establishment of Class E Airspace; Tappahannock, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Tappahannock-Essex County Airport, Tappahannock, VA (KXSA) to accommodate newly developed Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that serve Tappahannock-Essex County Airport, Tappahannock, VA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2007.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket number FAA–2007–29264; Airspace Docket 07–AEA–04, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29264; Airspace Docket No. 07–AEA–04.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E5 airspace at Tappahannock, VA establishing the controlled airspace required to support the new RNAV GPS SIAPs at Tappahannock-Essex County Airport, Tappahannock, VA. The Tappahannock-Essex County Airport (new) has been built to replace the Tappahannock Municipal Airport at Tappahannock, VA. Both airports will remain open for most of 2008, after which Tappahannock Municipal is scheduled to close. Two Standard Instrument Approach Procedures (SIAPs) were developed to serve this new airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to contain the SIAPs and for Instrument Flight Rule (IFR) operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 Airspace at Tappahannock, VA. This action establishes the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Tappahannock-Essex County Airport, Tappahannock, VA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA VA E5 Tappahannock, VA [New]

Tappahannock-Essex County Airport, VA
(Lat. 37°51′35″ N., long. 76°53′39″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Tappahannock-Essex County Airport.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5326 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22492; Airspace Docket No. 05–AEA–020]

Amendment of Class E Airspace; St. Marys, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E Airspace at St. Marys, PA to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Elk Regional Medical Center (7PS9), St. Marys, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2007.

ADDRESSES: Send comments on this rule to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the docket number FAA–2005–22492; Airspace Docket 05–AEA–020, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current and is unlikely to result in adverse or negative comments. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. Afer the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22492; Airspace Docket No. 05–AEA–020.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at St. Marys, PA establishing the controlled airspace required to support the new RNAV helicopter Point in Space (PinS) approach at Elk Regional Medical Center. A new Copter RNAV 095 Point in Space (PinS) Special IAP serving the Elk Regional Medical Center has been developed. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass the IAP and for Instrument Flight Rule (IFR) operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish additional Class E5 Airspace at St. Marys, PA. The current E5 airspace at St. Marys does not provide adequate airspace for this new approach. This action provides the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Elk Regional Medical Center, St. Marys, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA PA E5 St. Marys, PA [Amended]

St. Marys Municipal Airport, PA
(Lat. 41°24′45″ N., long. 78°30′09″ W.)
Elk Regional Medical Center Point In Space Coordinates [Added]
(Lat. 41°26′09″ N., long. 78°34′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of St. Marys Municipal Airport and within 3.1 miles each side of a 091° bearing from the center of the St. Marys Municipal Airport extending from the 6.5-mile radius to 8.7 miles east of the airport; and that airspace within a 6-mile radius of the point in space (lat. 41°26′09″ N., long. 78°34′20″ W.) serving the Elk Regional Medical Center.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5327 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22491; Airspace Docket No. 05–AEA–019]

Amendment of Class E Airspace; Williamsport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E Airspace at Williamsport, PA, to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Williamsport Hospital (66PA), Williamsport, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2007.

ADDRESSES: Send comments on this rule to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket No. FAA–2005–22491; Airspace Docket No. 05–AEA–019, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and

this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22491; Airspace Docket No. 05–AEA–019.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Williamsport, PA establishing the additionally required controlled airspace to support the newly developed RNAV (GSP) helicopter Point in Space (PinS) approach serving Williamsport Hospital. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to contain the IAP and for Instrument Flight Rule (IFR) operations to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish additional Class E5 Airspace at Williamsport, PA. The controlled airspace at Williamsport does not provide adequate airspace to support this new approach, thus this action, which provides the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various level of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator, Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of the authority as it establishes controlled airspace at Williamsport Hospital, Williamsport, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA PA E5 Williamsport, PA [Amended]

Williamsport-Lycoming County Airport, Williamsport, PA
(Lat. 41°14′31″ N., long. 76°55′18″ W.)
Picture Rocks NDB
(Lat. 41°16′36″ N., long. 76°42′37″ W.)
Williamsport Hospital
Point In Space Coordinates
(Lat. 41°14′43″ N., long. 77°00′04″ W.)

That airspace extending upward from 700 feet above the surface within a 17.9-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 025° bearing to a 067° bearing from the airport and within a 12.6-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 067° bearing to a 099° bearing from the airport and within a 6.7-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 099° bearing to a 270° bearing from the airport and within 17.9-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 270° bearing to a 312° bearing from the airport and within a 19.6-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 312° bearing to a 350° bearing from the airport and within a 6.7-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 350° bearing to a 025° bearing from the airport and within 4.4 miles each side of the Williamsport-Lycoming County Airport ILS localizer east course extending from the Picture Rocks NDB to 11.3 miles east of the NDB; and that airspace within a 6-mile radius of the point in space (lat. 41°14′43″ N., long. 77°00′04″ W.) serving the Williamsport Hospital.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5328 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22489; Airspace Docket No. 05–AEA–017]

Amendment to Class E Airspace; Du Bois, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E airspace at Du Bois, PA to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Du Bois Regional Medical Center, Du Bois, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 30, 2007.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the docket number FAA–2005–22489; Airspace Docket No. 05–AEA–017, at the beginning of your comments.

You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. 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. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22489; Airspace Docket No. 05–AEA–017.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Du Bois, PA providing controlled airspace required to support the new RNAV GPS helicopter point in space (PinS) approach at Du Bois Regional Medical Center. A new RNAV/GPS Copter 350 Point in Space (PinS) Special IAP at the Du Bois Regional Medical Center has been developed. The current Class E Airspace at nearby Du Bois Airport will not encompass this adjacent IAP, therefore, the FAA is amending title 14, Code of Federal Regulations (14 CFR) part 71 Class E5 Airspace at Du Bois, PA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for the protection of the IAP and for Instrument Flight Rule (IFR) operations that serve the Du Bois Regional Medical Center. This action provides that adequate controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E Airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Du Bois, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, is amended as follows:

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

* * * * *

AEA PA E5 Du Bois, PA [Amended]

Du Bois-Jefferson County Airport, Du Bois, PA
(Lat. 41°10′42″ N., long. 78°53′55″ W.)
Du Bois ILS Localizer Northeast Course
(Lat. 41°10′28″ N., long. 78°54′31″ W.)
Du Bois ILS Northeast Course OM
(Lat. 41°13′11″ N., long. 78°48′08″ W.)
Du Bois Regional Medical Center [Added]
Point In Space Coordinates
(Lat. 41°06′09″ N., long. 78°46′06″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Du Bois-Jefferson County Airport and within 3.1 miles either side of the Du Bois ILS localizer northeast course extending from the 8.5-mile radius to 10 miles northeast of the OM; and that airspace within a 6-mile radius of the point in space (lat. 41°06′09″ N., long. 78°46′06″ W.) serving Du Bois Regional Medical Center.

* * * * *

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

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5329 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27430; Airspace Docket No. 07–ANM–4]

Establishment of Class E Airspace; Springfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E surface airspace at Springfield, CO. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Springfield Municipal Airport. This action will enhance the safety of Instrument Flight rules (IFR) aircraft operations at Springfield Municipal Airport, Springfield, CO. Additionally this action also corrects the geographic location of Springfield Municipal Airport, CO.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Western Service Area Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On August 9, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Springfield, CO, (72 FR 44815). This action would improve the safety of IFR aircraft at Springfield Municipal Airport, Springfield, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Springfield, CO. Controlled airspace is necessary to accommodate IFR aircraft at Springfield Municipal Airport, Springfield, CO.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 Class E airspace at Springfield, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO, E5 Springfield, CO [New]

Springfield Municipal Airport, CO
(Lat. 37°27′31″ N., long. 103°37′05″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at TOBE VORTAC, thence north along V–169 to lat. 38°34′00″ N., thence to lat. 38°34′00″ N., long. 102°00′00″ W., thence to lat. 36°30′00″ N., long. 102°00′00″ W., thence west on lat. 36°30′00″ N. to V–81, thence northwest along V–81 to point of beginning.

* * * * *

Issued in Seattle, Washington, on October 17, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–21133 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 5976]

RIN 1400–AC40

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Consular Officer Procedures in Convention Cases

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: This rule amends Department of State regulations to provide for intercountry adoptions that will occur pursuant to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000 (IAA). This rule addresses consular officer processing of immigration petitions, visas, and Convention certificates in cases of children immigrating to the United States in connection with an adoption covered by the Convention.

EFFECTIVE DATE: This rule is effective October 30, 2007. Information about the date the Convention will enter into force is provided in 22 CFR 96.17.

FOR FURTHER INFORMATION CONTACT: Barbara J. Kennedy, Legislation and Regulations Division, Visa Services, United States Department of State, 2401 E Street, NW., Room L–603, Washington, DC 20520–0106; telephone 202–663–1206 or e-mail *KennedyBJ@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country party to the Convention by persons habitually resident in another country party to the Convention. It establishes procedures to be followed in such adoption cases and imposes safeguards to protect the best interests of the children at issue. It also provides for recognition of adoptions that occur pursuant to the Convention. In the United States, the implementing legislation for the Hague Convention is the Intercountry Adoption Act of 2000 (IAA). To implement the Convention, the IAA makes two significant changes to the Immigration and Nationality Act (INA): (1) It creates a new definition of ''child'' applicable in Convention adoption cases, found at INA 101(b)(1)(G), that roughly parallels the current definition of ''child'' in INA 101(b)(1)(F) with respect to an orphan, but that applies only to children being adopted from Convention countries. (2) It incorporates Hague procedures into the immigration process for children covered by INA 101(b)(1)(G), most directly by precluding approval of an immigration petition under this classification until the Department has certified that the child was adopted (or legal custody was granted for purposes of emigration and adoption) in accordance with the Convention and the IAA. Separately, section 301 of the IAA requires all Federal, State, and local domestic entities to recognize adoptions or grants of legal custody that have been so certified by the Department.

On October 4, 2007, the Department of Homeland Security (DHS) published in the **Federal Register** at 72 FR 56832 an interim rule on ''Classification of aliens as children of United States citizens based on intercountry adoptions under the Hague Convention'' (8 CFR parts 103, 204 and 213a) (''DHS Rule''). That rule governs the adjudication of Forms I–800A (relating to the suitability of prospective adoptive parents for intercountry adoption under the Convention) and Forms I–800 (relating to the classification of a Convention adoptee as the child of the adoptive parent(s) for purposes of the immigration and nationality laws of the United States). Additional regulations implement other aspects of the Convention and the IAA, such as those on the accreditation/approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR part 96), the preservation of records (22 CFR part 98), and certificate issuance with respect to United States court proceedings (22 CFR part 97). Further background on the Convention and the IAA is provided in the Preamble to the Final Rule on the Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000, Sections III and IV, 71 FR 8064–8066 (February 15, 2006).

Discussion of Comments on the Proposed Rule

This section provides a discussion of the comments received by the Department of State on the proposed rule.

1. *Comment:* Commenters requested elaboration of the operational component of this rule, including the mechanics of how the applications for petition approval and visa eligibility will be submitted. Specifically, who completes and submits the petition to the consular officer and at what stage in the process? Also, will it be possible for adoption service providers to submit petitions abroad, with required documentation and fees, on behalf of prospective adoptive parents?

Response: Once the Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, has been approved, a Form I–800, Petition to Classify Convention Adoptee as Immediate Relative, may be submitted either to DHS or to the consular officer, as under the current procedure in immigration cases involving orphan adoption. The DHS Rule, at 8 CFR 204.308, indicates that the proper filing location for Form I–800A and Form I–800 will be specified on the instructions for each form. The Supplementary Information, at 72 FR 56841–42, states that DHS anticipates that the filing process for Convention cases will be

similar to the process for orphan cases. The Form I–800A will always be filed in the United States with U.S. Citizenship and Immigration Services (USCIS). The Form I–800 may also be filed with USCIS, either at a Stateside office, or abroad, if the prospective adoptive parent(s) live abroad and USCIS has an office in the country in which they live. They may file the Form I–800 with a visa-issuing post if (a) they are physically present within the territory of the visa-issuing post when they file the Form I–800, and (b) either there is no USCIS office in that country or that USCIS office in country has delegated its authority to accept the filing of Forms I–800 to the visa-issuing post. The DHS Rule has no provision for the filing of the petition abroad when the prospective adoptive parents are physically present in the United States. As soon as the Form I–800 has been provisionally approved, however, the Form I–800 would generally be forwarded to the visa-issuing post for final approval once the adoption is completed. 8 CFR 204.313(g)(2).

As for the visa application, there are no absolute requirements for appearance at a consular post and the signing of the application until the visa interview, which would generally not be practicable until after the adoption has occurred. The unsigned visa application, with supporting documents and fees, may be filed with a consular officer by an adoption service provider, on behalf of prospective adoptive parents, if not present, so that the application may be initially reviewed.

2. *Comment:* One commenter requested further elaboration of the provisional approval process, especially regarding when the provisional approval will occur and what information will be required for the provisional approval determination.

Response: The DHS Rule explains much of this process. The basic steps in the provisional approval process are summarized as follows.

Pursuant to the DHS Rule, the prospective adoptive parent(s) file Form 1–800A with the United States Citizenship and Immigration Service (USCIS), together with a home study (prepared in accordance with 8 CFR 204.311 by someone authorized under 22 CFR Part 96 and 8 CFR 204.301 to complete home studies for Convention cases), and other evidence as described in new 8 CFR 204.310.

If USCIS approves the Form I–800A, the prospective adoptive parent(s) may arrange for the submission of the approval notice, the home study and other supporting evidence to the Central Authority of the Convention Country in which they hope to adopt a child. 8 CFR 204.312(d)(2). The Central Authority must receive the same home study as was submitted to USCIS.

Once the prospective adoptive parent(s) have received a report and any other information on a child from the relevant Central Authority and have decided to accept the referral, they would file Form I–800, with the report and other evidence specified in new 8 CFR 204.313, with the USCIS office or visa-issuing post specified in the Form I–800 instructions. This step must occur before the prospective adoptive parent(s) have adopted or obtained legal custody of the child.

At this point, a USCIS officer or, if the Form I–800 is properly filed with a visa-issuing post, a consular officer will provisionally adjudicate the Form I–800. (If the prospective adoptive parent(s) filed an application for waiver of any known or suspected ground of inadmissibility at the same time they filed the Form I–800 at a consular office, the consular officer will forward both the Form I–800 and the waiver application to the appropriate USCIS office for decision as to approval of the waiver and provisional approval of the Form I–800.)

If provisional approval of the I–800 petition is granted, the prospective adoptive parent(s) may then file a visa application for the child with the visa issuing post with jurisdiction over the child's country of residence. Section 42.24(g) sets forth the documentary requirements for the visa application, and states which requirements may be satisfied to the extent practicable. This may vary from case to case. In requiring some evidence only to the extent practicable, the rule recognizes that some evidence may not be obtainable at this early stage. However, in order to obtain as accurate an assessment of the case as possible at the initial review stage, it is important that supporting documents not be omitted unless obtaining them is truly not practicable under the circumstances of the particular case.

If, after reviewing the information provided, it appears to the consular officer that the child would not be ineligible, based on the information provided, to receive an immigrant visa, the officer will annotate the visa application to reflect this conclusion. See section 42.24(h).

If a USCIS officer or a consular officer has provisionally approved the I–800 petition and a consular officer has annotated the visa application, the consular officer is to notify the relevant Central Authority that the steps required by Article 5 of the Convention have been taken. (Article 5 of the Convention requires the receiving country to have: (a) Determined that the prospective adoptive parent(s) are eligible and suited to adopt; (b) ensured that the prospective adoptive parent(s) have been counseled as may be necessary; and (c) determined that the child is or will be authorized to enter and reside permanently in the receiving country.) The prospective adoptive parent(s) may then either complete the adoption in the Convention country or else obtain legal custody for the purpose of adoption.

After receiving appropriate notification from the Convention country that the adoption has occurred or, in custody for purpose of adoption cases, that legal custody has been granted, including a copy of the adoption or custody order, the consular officer will verify Convention and IAA compliance before affixing a certification to that effect to the adoption order. In verifying compliance, the consular officer must consider U.S. prior notification under Article 5 plus appropriate notification from the country of origin as prima facie evidence of compliance with the Convention and the IAA. In other words, the prior determination plus appropriate notification of the adoption or grant of legal custody is sufficient to establish compliance, so long as the consular officer does not have a well-founded and substantive reason to believe that the adoption or the grant of legal custody was non-compliant with the Convention or the IAA. At that point, the consular officer will finally adjudicate the Form I–800 and the visa application. If, however, the consular officer determines that the Form I–800 is not approvable, the consular officer will refer the case to USCIS for review and decision. The Department does not anticipate that this situation will arise often, if at all, because of the procedural safeguards inherent in the Convention adoption process.

3. *Comment:* One commenter asked what ''appeal process'' would be provided for prospective adoptive parents if, pursuant to section 42.24(h), they were informed of an ineligibility.

Response: Under the DHS Rule, prospective adoptive parents may file a waiver application for any inadmissibilities when the I–800 petition is filed. See 8 CFR 204.313(d)(5). After provisional approval of the petition, if an ineligibility is found that has not been overcome by a waiver submitted at the provisional approval stage, the visa application will be denied and prospective adoptive parents will be advised whether a waiver is available

and, if so, how to apply for it. As in any other immigrant visa case, an applicant will have an opportunity to present any additional evidence that may overcome the grounds of ineligibility, and to submit an application for a waiver if the visa is refused because of an ineligibility for which a waiver is available. See 22 CFR 42.81 and 8 CFR 212.7.

If USCIS denies a Form I–800A or a Form I–800, the prospective adoptive parents may appeal the denial, as specified in 8 CFR 204.314. The traditional legal doctrine of non-reviewability of a decision to deny a visa application, however, applies to Convention adoption cases to the same extent as any other visa application case.

4. *Comment:* One commenter asked whether there would be a time frame for provisional review.

Response: The DHS rule, which governs the provisional approval process, does not include a time frame for provisional review. This rule also does not include a time frame for the initial review of the visa application.

5. *Comment:* One commenter asked whether an agency could petition for provisional approval on a child's behalf before a prospective adoptive parent is identified.

Response: No. The Form I–800A for prospective adoptive parent(s) must be approved before a Form I–800 petition can be submitted on behalf of a particular child. However, an adoption service provider could gather the relevant documents in advance so as to expedite the submission of the I–800 petition once prospective adoptive parent(s) are identified.

6. *Comment:* One commenter asked whether the provisional approval of the I–800 petition had to take place in the country of origin or whether, in some cases, it could take place at the local USCIS office.

Response: The office with which the prospective adoptive parent(s) file the Form I–800 petition will vary. See DHS Rule, 8 CFR 204.308. If the Form I–800 is properly filed with a Stateside USCIS office, that office will make the decision regarding provisional approval. If the Form I–800 is properly filed abroad, the USCIS office or visa-issuing post abroad will make this decision.

7. *Comment:* One commenter suggested that the sixth word from the end of 42.24(f) be changed from ''return'' to ''forward,'' since in some cases DHS may not have seen the petition previously.

Response: We have made the suggested change, and have also replaced the reference to 22 CFR 42.43 with a reference to 8 CFR 204.313(i)(3), which requires consular officers to forward any Form I–800 petition that is not clearly approvable, along with accompanying evidence, to USCIS.

8. *Comment:* One commenter asked about how information about the specific documents required from each country of origin would be shared with prospective adoptive parents and adoption service providers.

Response: As currently, the information required from the country of origin will be available in the country-specific adoption flyer which is available both on *www.travel.state.gov* and from the relevant United States Consulate.

9. *Comment:* One commenter expressed concerns about the language in the explanatory section of the proposed rule, noting that generally the adoption service provider would be delivering the United States Government's Article 5 notification. The commenter expressed a preference that the consular officer directly notify the foreign Central Authority. The commenter also requested details about the acceptable methods of transmission.

Response: How the notification is transmitted to the country of origin will vary depending on the practices and procedures set up by the relevant consular post. This language was included to make clear that, although the notification would be originated by the consular officer, it could be delivered by adoption service providers. The United States approach to implementation of the Convention, as set forth in the IAA, has been to use certain adoption service providers to perform some Central Authority functions, in accordance with 22 U.S.C. part 96. (Convention Article 22 permits a Convention country to use accredited bodies and approved persons to perform certain tasks in the adoption process). Such providers are capable of transmitting this notification securely and expeditiously, in a method that will depend on the circumstances of the particular country.

10. *Comment:* One commenter asked for clarification of 42.24 (j), specifically what type of notification was anticipated, and suggested changing the term ''notification'' to ''documentation.''

Response: The type of notification that will satisfy section 42.24(j) may vary depending on the Central Authority of the relevant country of origin. The United States expects to work diplomatically with these Central Authorities to ensure that the necessary notification is obtained. ''Notification'' is the term used here because this language is drawn from the IAA, which refers to ''appropriate notification'' from the foreign Central Authority as a prerequisite to certificate issuance.

11. *Comment:* One commenter asked how the rule would affect the length and the number of any visits the prospective adoptive parents take to the country of origin.

Response: Because both the I–800A and the I–800 may be filed domestically, and the visa application may be filed without the physical presence of the applicant if not practicable, the rule will not necessarily impact the length or number of visits to the country of origin.

12. *Comment:* One commenter asked how provisional approval would affect the timing of the Interstate Compact (ICPC) approval.

Response: The DHS rule determines at what point in the process the petitioner for the child must comply with any U.S. State's pre-adoption requirements, including any State requirement to comply with ICPC. See, e.g., 8 CFR 204.305 (State preadoption requirements); 8 CFR 204.310 (filing requirements for Form I–800A); 8 CFR 204.311 (Convention adoption home study requirements); 8 CFR 204.313 (filing and adjudication of a Form I–800).

Summary of the Final Regulation

This final rule establishes new procedures that consular officers will follow in adjudicating cases of children whose cases are covered by the Convention. When children habitually resident abroad in a Convention country have been, are being, or will be moved in connection with adoption by parents habitually resident in the United States, the Convention applies. Although much of the petition and visa processes will be similar to the current orphan case procedures, there are important changes. Perhaps most significantly, United States authorities will perform the bulk of petition and visa adjudication work much earlier than under current practice. This early review will enable United States authorities to make the determination required by Article 5 of the Convention that the child will be eligible to enter and reside permanently in the receiving state prior to the adoption or grant of legal custody. The regulation also provides that, once the country of origin has provided appropriate notification that the adoption or grant of legal custody has occurred, including a copy of the adoption or custody order, the consular officer will issue a certificate to the United States adoptive or prospective adoptive parent(s) if the officer is satisfied that the requirements of the Convention and IAA have been met, and only if so will the consular

officer approve the immigration petition and complete visa processing. To streamline the process, the regulation departs from current practice by allowing consular officers to approve petitions for children whose cases are covered by the Convention regardless of whether the petition was originally filed with the Department or DHS.

The Department is issuing the rule as final with minor changes, taking into account the comments received and the DHS Rule. In particular, sections 42.24(f), (h) and (m) were slightly edited to reflect the fact that a petition filed originally with a consular officer would be ''forwarded,'' not ''returned,'' to DHS if the consular officer concluded that it was not clearly approvable, and to reflect the correct regulations. Section 42.24(d) was modified by the deletion of a requirement that a consular officer approve the petition, which would not have allowed for visa issuance in a case in which DHS approved a provisionally-approved petition after the consular officer had returned it as not clearly approvable. In addition, section 42.24(b) was changed to correspond more closely to the DHS rule with respect to the scope of application of the Convention and the handling of transition cases and cases involving a Convention adoptee who seeks to travel to the United States as a nonimmigrant for purposes of naturalization under INA section 322, as specified in 8 CFR 204.313(b)(2). Sections 42.24(e) and (h) were amended to clarify the operations of waivers of ineligibility. Also, a cross-reference making the definitions in 22 CFR 96.2 apply to 22 CFR 42.24 was added for consistency with all other relevant rules. (The DHS Rule and the Department of State rules for 22 CFR 96, 97, 98, 99 and now 22 CFR 42.24 use the same definitions for the same terms when those terms are defined in 22 CFR 96.2.) Consequently, the defined terms ''Convention country'' and ''legal custody'' were used in sections 42.24(b), (f), and (j). In addition, section 42.24(j) was amended to clarify that the country of origin's provision of appropriate notification, in addition to the consular officer's notification pursuant to Article 5, is required to establish prima facie evidence of compliance with the Convention and the IAA. Finally, the Department further modified section 42.24(h) to reflect the possibility that a visa ineligibility identified by a consular officer during the initial review could be either overcome or, after forwarding to DHS, waived.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department published a proposed rule and invited public comment.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule regulates individual aliens who seek immigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule would not result in any such expenditure, nor would it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. The Department plans for applicants for visas for children adopted under the Hague Convention to use visa application forms that have already been approved by OMB. The forms related to the petition process, such as the I–800 and I–800A, are DHS forms, and DHS would be responsible for compliance with the PRA, where it applies, with respect to those forms. We currently anticipate that the certificates to be issued by consular officers will not involve the collection of additional information not already collected. Moreover, section 503(c) of the IAA exempts from the PRA any information collection ''for use as a Convention record as defined'' in the IAA. Information collected on Convention adoptions in connection with the visa, petition, and certificate processes would relate directly to specific Convention adoptions (whether final or not), and therefore would fall within this exemption. Accordingly, the Department has concluded that this regulation will not involve an ''information collection'' under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Immigration, Passports, Visas, Intercountry adoption, Convention certificates.

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

■ In view of the foregoing, 22 CFR part 42 is amended as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279.

■ 2. Add § 42.24 to Subpart C to read as follows:

§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

(a) For purposes of this section, the definitions in 22 CFR 96.2 apply.

(b) On or after the Convention effective date, as defined in 22 CFR 96.17, a child habitually resident in a Convention country who is adopted by a United States citizen deemed to be habitually resident in the United States in accordance with applicable DHS regulations must qualify for visa status under the provisions of INA section 101(b)(1)(G) as provided in this section. Such a child shall not be accorded status under INA section 101(b)(1)(F), *provided that* a child may be accorded status under INA section 101(b)(1)(F) if Form I–600A or I–600 was filed before the Convention effective date. Although this part 42 generally applies to the issuance of immigrant visas, this section 42.24 may also provide the basis for issuance of a nonimmigrant visa to permit a Convention adoptee to travel to the United States for purposes of naturalization under INA section 322.

(c) The provisions of this section govern the operations of consular officers in processing cases involving children for whom classification is sought under INA section 101(b)(1)(G), unless the Secretary of State has personally waived any requirement of the IAA or these regulations in a particular case in the interests of justice or to prevent grave physical harm to the child, to the extent consistent with the Convention.

(d) An alien child shall be classifiable under INA section 101(b)(1)(G) only if, before the child is adopted or legal custody for the purpose of adoption is granted, a petition for the child has been received and provisionally approved by a DHS officer or, where authorized by DHS, by a consular officer, and a visa application for the child has been received and annotated in accordance with paragraph (h) of this section by a consular officer. No alien child shall be issued a visa pursuant to INA section 101(b)(1)(G) unless the petition and visa application are finally approved.

(e) If a petition for a child under INA section 101(b)(1)(G) is properly filed with a consular officer, the consular officer will review the petition for the purpose of determining whether it can be provisionally approved in accordance with applicable DHS requirements. If a properly completed application for waiver of inadmissibility is received by a consular officer at the same time that a petition for a child under INA section 101(b)(1)(G) is received, provisional approval cannot take place unless the waiver is approved, and therefore the consular officer, pursuant to 8 CFR 204.313(i)(3) and 8 CFR 212.7, will forward the petition and the waiver application to DHS for decisions as to approval of the waiver and provisional approval of the petition. If a petition for a child under INA section 101(b)(1)(G) is received by a DHS officer, the consular officer will conduct any reviews, determinations or investigations requested by DHS with regard to the petition and classification determination in accordance with applicable DHS procedures.

(f) A petition shall be provisionally approved by the consular officer if, in accordance with applicable DHS requirements, it appears that the child will be classifiable under INA section 101(b)(1)(G) and that the proposed adoption or grant of legal custody will be in compliance with the Convention. If the consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer shall forward it to DHS pursuant to 8 CFR 204.313(i)(3).

(g) After a petition has been provisionally approved, a completed visa application form, any supporting documents required pursuant to § 42.63 and § 42.65, and any required fees must be submitted to the consular officer in accordance with § 42.61 for a provisional review of visa eligibility. The requirements in § 42.62, § 42.64, § 42.66 and § 42.67 shall also be satisfied to the extent practicable.

(h) A consular officer shall provisionally determine visa eligibility based on a review of the visa application, submitted supporting documents, and the provisionally approved petition. In so doing, the consular officer shall follow all procedures required to adjudicate the visa to the extent possible in light of the degree of compliance with §§ 42.62 through 42.67. If it appears, based on the available information, that the child would not be ineligible under INA section 212 or other applicable law to receive a visa, the consular officer shall so annotate the visa application. If evidence of an ineligibility is discovered during the review of the visa application, and the ineligibility was not waived in conjunction with provisional approval of the petition, the prospective adoptive parents shall be informed of the ineligibility and given an opportunity to establish that it will be overcome. If the visa application cannot be annotated as described above, the consular officer shall deny the visa in accordance with § 42.81, regardless of whether the application has yet been executed in accordance with § 42.67(a); provided however that, in cases in which a waiver may be available under the INA and the consular officer determines that the visa application appears otherwise approvable, the consular officer shall inform the prospective adoptive parents of the procedure for applying to DHS for a waiver. If in addition the consular officer comes to know or have reason to believe that the petition is not clearly approvable as provided in 8 CFR 204.313(i)(3), the consular officer shall forward the petition to DHS pursuant to that section.

(i) If the petition has been provisionally approved and the visa application has been annotated in accordance with subparagraph (h), the consular officer shall notify the country of origin that the steps required by Article 5 of the Convention have been taken.

(j) After the consular officer has received appropriate notification from the country of origin that the adoption or grant of legal custody has occurred and any remaining requirements established by DHS or §§ 42.61 through 42.67 have been fulfilled, the consular officer, if satisfied that the requirements of the IAA and the Convention have been met with respect to the adoption or grant of legal custody, shall affix to the adoption decree or grant of legal custody a certificate so indicating. This certificate shall constitute the certification required by IAA section 301(a) and INA section 204(d)(2). For purposes of determining whether to issue a certificate, the fact that a consular officer notified the country of origin pursuant to paragraph (i) of this

section that the steps required by Article 5 of the Convention had been taken and the fact that the country of origin has provided appropriate notification that the adoption or grant of legal custody has occurred shall together constitute prima facie evidence of compliance with the Convention and the IAA.

(k) If the consular officer is unable to issue the certificate described in paragraph (j) of this section, the consular officer shall notify the country of origin of the consular officer's decision.

(l) After the consular officer determines whether to issue the certificate described in paragraph (j) of this section, the consular officer shall finally adjudicate the petition and visa application in accordance with standard procedures.

(m) If the consular officer is unable to give final approval to the visa application or the petition, then the consular officer shall forward the petition to DHS, pursuant to § 42.43 or 8 CFR 204.313(i)(3), as applicable, for appropriate action in accordance with applicable DHS procedures, and/or refuse the visa application in accordance with § 42.81. The consular officer shall notify the country of origin that the visa has been refused.

Dated: October 22, 2007.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E7–21340 Filed 10–29–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820–AB57

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Corrections

AGENCY: Office of Special Education Programs, Department of Education.

ACTION: Correcting amendments.

SUMMARY: The Department of Education published final regulations in the **Federal Register** on August 14, 2006, to implement changes made to the Individuals with Disabilities Education Act by the Individuals with Disabilities Education Improvement Act of 2004. That document inadvertently included minor technical errors. This document corrects the final regulations.

DATES: Effective October 30, 2007.

FOR FURTHER INFORMATION CONTACT: Suzanne Sheridan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E229, Washington, DC 20202. Telephone: (202) 401–6025.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can 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 document corrects technical errors included in the final regulations which were published in the **Federal Register** on August 14, 2006 (71 FR 46540).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/index.html*.

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(Catalog of Federal Domestic Assistance Numbers: Assistance to States for the Education of Children with Disabilities (84.027) and Preschool Grants for Children with Disabilities (84.173))

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

■ Accordingly, 34 CFR part 300 is corrected by making the following correcting amendments:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

§ 300.8 [Corrected]

■ 2. In § 300.8(c)(3), add the punctuation ''.'' after the word, ''amplification''.

§ 300.9 [Corrected]

■ 3. In § 300.9 —

■ A. In paragraph (a), remove the word ''other'' and add, in its place, the words ''through another''; and

■ B. In paragraph (c)(1), remove the word ''anytime'' and add, in its place, the words ''any time''.

§ 300.18 [Corrected]

■ 4. In § 300.18 —

■ A. In the heading for paragraph (c), add the word ''academic'' before the word ''achievement'';

■ B. In the introductory text in paragraph (c), add the word ''academic'' before the word ''achievement'';

■ C. In paragraph (c)(2), add the words ''alternate academic achievement'' before the word ''standards''; and

■ D. In the introductory text of paragraph (e), remove the word ''meets'' and add, in its place, the word ''meet''.

§ 300.103 [Corrected]

■ 5. In § 300.103(a), add the word ''that'' after the word ''support''.

§ 300.118 [Corrected]

■ 6. In § 300.118, remove the word ''for'' that appears after the word ''supervision'' and add, in its place, the word ''of''.

§ 300.137 [Corrected]

■ 7. In § 300.137(b)(1), remove the citation ''§ 300.134(c)'' and add, in its place, the citation ''§ 300.134(d)''.

§ 300.162 [Corrected]

■ 8. In § 300.162(c)(1), remove the citation ''§ 300.202'' and add, in its place, the citation ''§ 300.203''.

§ 300.172 [Corrected]

■ 9. In the introductory text of § 300.172(c)(1), remove the word ''must'' that appears before the word ''enter''.

§ 300.181 [Corrected]

■ 10. In § 300.181(c)(5), remove the citation ''(b)(4)'' and add, in its place, the citation ''(c)(4)''.

§ 300.301 [Corrected]

■ 11. In § 300.301(a), remove the phrase ''§§ 300.305 and 300.306'' and add, in its place, the phrase ''§§ 300.304 through 300.306''.

§ 300.305 [Corrected]

■ 12. In the introductory text of § 300.305(d)(1), remove the word ''of'' and add, in its place, the word ''of''.

§ 300.306 [Corrected]

■ 13. In § 300.306(a)(1), remove the citation ''paragraph (b)'' and add, in its place, the citation ''paragraph (c)''.

§ 300.320 [Corrected]

■ 14. In § 300.320(a)(2)(ii), add the word ''academic'' before the word ''achievement''.

§ 300.321 [Corrected]

■ 15. In § 300.321(a)(3), remove the word ''then'' and add, in its place, the word ''than''.

§ 300.504 [Corrected]

■ 16. In the introductory text of § 300.504(c), remove the citation ''§ 300.520,''.

§ 300.506 [Corrected]

■ 17. In § 300.506(b)(7), add a new paragraph designation ''(8)'' before the word ''Discussions''.

§ 300.510 [Corrected]

■ 18. In § 300.510(e), remove the citation ''paragraph (c)'' and add, in its place, the citation ''paragraph (d)''.

§ 300.704 [Corrected]

■ 19. In § 300.704(a)(2)(ii), remove the word ''For'' and add, in its place, the word ''for''.

§ 300.812 [Corrected]

■ 20. In § 300.812(b)(2), remove the word ''For'' and add, in its place, the word ''for''.

§ 300.533 [Corrected]

■ 21. In § 300.533, remove the citation ''§ A300.530(c)'' and add, in its place, the citation ''§ 300.530(c)''.

Appendix E to Part 300—[Corrected]

■ 22. Under the term ''ALTERNATE ASSESSMENTS'', in the first entry, add the word ''academic'' before the word ''achievement''.

■ 23. Under the term ''HIGHLY QUALIFIED TEACHER (R–Z)'', in the second entry, add the word ''academic'' before the word ''achievement''.

Dated: October 24, 2007.

William W. Knudsen,

Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–21338 Filed 10–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–XD05

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Temporary orders; inseason orders; request for comments.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2007 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders. Comments will be accepted through November 14, 2007.

ADDRESSES: You may submit comments, identified by 0648–XD05 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736
- Mail: NMFS NWR, 7600 Sand Point Way Ne, Seattle, WA, 98115.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey, by phone at 206–526–4323, *sarah.mcavinchey@noaa.gov*

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by Regional Administrator, Northwest Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2007 orders are being published in this single document to avoid fragmentation.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2007 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22:

Order No. 2007–01: Issued 9 a.m., August 22, 2007

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets for the retention of pink salmon only from 12 p.m. (noon) Thursday, August 23, 2007, to 12 p.m. Saturday August 25, 2007.

All Citizen Fisheries

Areas 7 and 7A Reef Net: Open to pink salmon fishing with non retention of sockeye from 5 a.m. to 9 p.m. on Thursday, August 23 and Friday, August 24, 2007 and 5 a.m. to 12 p.m. (noon) on Saturday August 25, 2007.

Order No. 2007–02: Issued 3 p.m., August 24, 2007

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets for pink salmon from 12 p.m. (noon), Saturday, August 25, 2007, to 12 p.m. (noon) Wednesday, August 29, 2007.

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 5 a.m., Sunday, August 26, 2007, to 9 p.m. Monday, August 27, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the East Point line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point light on Saturna Island in the Province of British Columbia will remain closed (East Point line closure).

Reef Net: Open 5:00 a.m. to 9:00 p.m. on Saturday, August 25, 2007, 5:00 a.m. to 9:00 p.m. Sunday August 26, 2007 and 5:00 a.m. to 9:00 p.m. Tuesday August 28, 2007.

Purse Seine: Open 5:00 a.m. to 9:00 p.m. Tuesday August 28, 2007.

Gillnet: Open 8:00 a.m. to 11: 59 p.m. Tuesday August 28, 2007.

Order No. 2007–03: Issued 11:45 a.m., August 4, 2007

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets for pink salmon from 12 p.m. (noon) Wednesday, August 29, 2007, to 12 p.m. (noon) Saturday, September 1, 2007.

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 5 a.m., Thursday, August 30, 2007, to 9 p.m. Friday, August 31, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the East Point line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point light on Saturna Island in the Province of British Columbia will remain closed (East Point line closure).

Reef Net: Open 5 a.m. to 9 p.m. on Wednesday, August 29, 2007.

Purse Seine: Open 5 a.m. to 9 p.m. Wednesday, August 29, 2007.

Gillnet: Open 8 a.m. to 11: 59 p.m. Wednesday, August 29, 2007.

Order No. 2007–04: Issued 2 p.m., August 31, 2007

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets for pink salmon from 12 (noon) Saturday, September 1, 2007, to 12 p.m. (noon) Wednesday, September 5, 2007.

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 5 a.m. Saturday September 1, 2007, to 9 p.m. Monday, September 3, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the East Point line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point light on Saturna Island in the Province of British Columbia will remain closed (East Point line closure).

Reef Net: Open 5 a.m. to 9 p.m. on Saturday September 1, 2007, 5 a.m. to 9 p.m. on Sunday September 2, 2007, and 5 a.m. to 9 p.m. on Monday September 3, 2007.

Purse Seine: Open 5 a.m. to 9 p.m. on Saturday September 1, 2007, and 5 a.m. to 9 p.m. on Sunday September 2, 2007.

Gillnet: Open 8 a.m. to 11:59 p.m. on Saturday September 1, 2007, 8 a.m. to 11:59 p.m. on Sunday September 2, 2007.

Order No. 2007–05: Issued 12 p.m., September 3, 2007.

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets for pink salmon from 12 p.m. (noon) Wednesday, September 5, 2007, to 12 (noon)Thursday September 6, 2007.

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 9 p.m. Monday, September 3, 2007, to 9 p.m. Wednesday, September 5, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the East Point line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point light on Saturna Island in the Province of British Columbia will remain closed (East Point line closure).

Reef Net: Open 5 a.m. to 9 p.m. on Tuesday September 4, 2007, and 5 a.m. to 9 p.m. on Wednesday September 5, 2007.

Purse Seine: Open 5 a.m. to 9 p.m. on Tuesday September 4, 2007, and 5 a.m. to 9 p.m. on Wednesday September 5, 2007.

Gillnet: Open 8 a.m. to 11:59 p.m. on Tuesday September 4, 2007 and 8 a.m. to 11:59 p.m. on Wednesday September 5, 2007.

Order No. 2007–06: Issued 3 p.m., September 5, 2007.

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets for pink salmon from 12 (noon) Thursday September 6, 2007, to 12 p.m. (noon) Saturday, September 8, 2007.

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 9 p.m. Wednesday, September 5, 2007, to 9 p.m., Friday, September 7, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to

the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the Iwersen's Dock line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the province of British Columbia (Iwersen's Dock line closure).

Reef Net: Open 5 a.m. to 9 p.m. on Thursday September 6, 2007, and 5 a.m. to 9 p.m. on Friday September 7, 2007.

Purse Seine: Open 5 a.m. to 9 p.m. on Thursday September 6, 2007, and 5 a.m. to 9 p.m. on Friday September 7, 2007.

Gillnet: Open 8 a.m. to 11:59 p.m. on Thursday September 6, 2007, and 8 a.m. to 11:59 p.m. on Friday September 7, 2007.

Order No. 2007–07: Issued 11 p.m., September 7, 2007.

The Fraser River Panel approved the following relinquishment of regulatory control in U.S. Puget Sound Panel waters:

Areas 4B, 5 and 6C: Relinquish regulatory control effective 12:01 p.m. Saturday, September, 8, 2007.

Treaty Indian Fisheries

Areas 6, 7, and 7A: Open to net fishing for pink salmon from 9 p.m., Friday, September 7, 2007, to 12 p.m. (noon), Monday, September 10, 2007, southerly and easterly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye and with the Iwersen's Dock line restriction in effect: That portion of area 7A that lies northerly and westerly of a straight line drawn from the Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the province of British Columbia (Iwersen's Dock line closure).

Reef Net: Open from 5 a.m. to 9 p.m. on Saturday, September 8, from 5 a.m. to 9 p.m. on Sunday, September 9, 2007, and from 5 a.m. to 9 p.m. on Monday, September 10, 2007.

Purse Seine: Open from 5 a.m. to 9 p.m. on Monday, September 10, 2007.

Gillnet: Open from 8 a.m. to 11:59 p.m. on Monday, September 10, 2007.

Order No. 2007–08: Issued 11 a.m., September 10, 2007.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye:

Reef Net: Open from 5 a.m. to 9 p.m. on Tuesday, September 11, from 5 a.m. to 9 p.m. on Wednesday September 12, 2007, from 5 a.m. to 9 p.m. on Thursday, September 13, 2007, and 5 a.m. to 9 p.m. on Friday September 14, 2007.

Order No. 2007–09: Issued 10 a.m., September 14, 2007.

All Citizen Fisheries

Areas 7 and 7A open to pink salmon fishing with non retention of sockeye:

Reef Net: Open from 5 a.m. to 9 p.m. on Friday, September 14, Saturday September 15, Sunday September 16, Monday September 17, Tuesday September 18, Wednesday September 19, and Thursday September 20, 2007.

Order No. 2007–10: Issued 10 a.m., September 19, 2007.

The Fraser River Panel approved the following relinquishment of regulatory control in U.S. Puget Sound Panel waters:

Area 7 and 7A: Relinquish regulatory control effective 12:01 a.m., Thursday, September 20, 2007.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 24, 2007.

Emily H. Menashes,

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

[FR Doc. E7–21329 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 209
Tuesday, October 30, 2007

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2007–0969; FRL–8489–1]

Determination of Nonattainment and Reclassification of the Beaumont/Port Arthur 8-Hour Ozone Nonattainment Area; State of Texas; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Beaumont/Port Arthur (BPA) marginal 8-hour ozone nonattainment area has failed to attain the 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. If EPA finalizes this finding, the BPA area will then be reclassified, by operation of law, as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the BPA area would then be as expeditiously as practicable, but no later than June 15, 2010. Once reclassified, Texas must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas as required by the CAA. In this action, EPA is also proposing the schedule for the State's submittal of the SIP revisions required for moderate areas once the area is reclassified.

DATES: Comments must be received on or before November 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0969, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0969. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0969, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas

75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *young.carl@epa.gov.*

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I. What Is the Background for This Proposed Action?

A. What Are the National Ambient Air Quality Standards?

The CAA requires EPA to establish a NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

B. What Is the Standard for 8-Hour Ozone?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3 -year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857, (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

> The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

C. What Is a SIP and How Does It Relate to the NAAQS for 8-Hour Ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

D. What Is the BPA Nonattainment Area, and What Is Its Current 8-Hour Ozone Nonattainment Classification?

The BPA 8-hour ozone nonattainment area consists of Hardin, Jefferson, and Orange Counties. For areas subject to Subpart 2 of the CAA, such as the BPA nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS and will be the same periods as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years, Severe—15 or 17 years; and Extreme—20 years. The Phase I Ozone Implementation Rule (April 30, 2004, 69 FR 23951) provides the classification scheme for the 8-hour ozone NAAQS (40 CFR 51.903). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004 (April 30, 2004, 69 FR 23858).

The BPA area was designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified ''marginal'' based on a design value of 0.091 ppm, with an attainment date of June 15, 2007 (April 30, 2004, 69 FR 23858). The design value of an area, which characterizes the severity of the air quality concern, is represented by the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period.

E. What Are the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications?

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether the area attained the ozone standard by that date. For marginal, moderate, and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified by operation of law

to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification. Different circumstances apply to severe and extreme areas.

F. What Happens if the BPA Area Attains the 8-Hour Ozone Standard at the End of 2007?

The BPA area may attain the 8-hour ozone standard at the end of 2007, based on data from 2005, 2006 and 2007. If EPA determines, after notice and comment rulemaking, that the area has attained the standard at the end of 2007, the requirement to submit SIPs related to attainment of the standard shall be suspended until such time as (1) the area is redesignated to attainment, at which time the requirements no longer apply; or (2) EPA determines that the area has violated the 8-hour ozone NAAQS (40 CFR 51.918). Other requirements not related to attainment would remain in force.

II. What Is EPA's Evaluation of the BPA Area's 8-Hour Ozone Data?

EPA makes attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Quality-assured air quality data from sites in the BPA area is presented in Table 1. For the BPA ozone nonattainment area, the attainment determination is based on 2004–2006 air quality data. The area has a design value of 0.085 ppm. Therefore, pursuant to section 181(b)(2) of the CAA, the BPA nonattainment area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—BPA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM) [1]

Site	4th Highest daily max			Design value 3 year average (2004–2006)
	2004	2005	2006	
Beaumont (48–245–0009)	0.082	0.081	0.085	0.082
Port Arthur West (48–245–0011)	0.080	0.079	0.085	0.081
Sabine Pass (48–245–0101)	0.091	0.082	0.084	0.085
Hamshire (48–245–0022)	0.084	0.080	0.078	0.080
West Orange (48–361–1001)	0.078	0.078	0.078	0.078
Mauriceville (48–361–1100)	0.066	0.076	0.071	0.071
Jefferson Co. Airport (48–245–0018)	0.084	0.083	0.084	0.083

[1]Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR part 50, Appendix I).

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to 2 one-year extensions of its attainment date based on the number of exceedances in the attainment year and if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. For the 8-hour standard, if an area's fourth highest daily maximum 8-hour average value in the attainment year is 0.084 ppm or less (40 CFR 51.907), the area is eligible for up to 2 one-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For BPA the attainment year is 2006. In 2006, the area's fourth highest daily maximum 8-hour average was 0.085 ppm. Based on this information, the BPA area currently does not qualify for a 1-year extension of the attainment date.

Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: The next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the BPA area's ozone design value at the time of today's notice is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.085 ppm. By contrast, the next higher classification for the BPA area is ''moderate''. Because ''moderate'' is a higher nonattainment classification than ''marginal'' under the CAA statutory scheme, upon the effective date of a final rulemaking, the BPA area will be reclassified by operation of law as ''moderate'', for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

III. What Action Is EPA Proposing?

A. Determination of Nonattainment, Reclassification of the BPA Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2), EPA is proposing to find that the BPA area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. If EPA finalizes this finding and it takes effect, the area shall be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after designation or June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which Texas will submit the SIP revisions necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

B. Proposed Date for Submitting a Revised SIP for the BPA Area

EPA must address the schedule by which Texas is required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, the State must provide for implementation of all control measures needed for attainment

no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification for the BPA area, January 1st is the beginning of the ozone monitoring season. As a result EPA proposes that the required SIP revision be submitted by Texas as expeditiously as practicable, but no later than January 1, 2009. This timeline also calls for implementation of applicable controls no later than January 1, 2009.

A revised SIP must include the following moderate area requirements: (1) An attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (40 CFR 51.910), and (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)).[2] See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b).

As discussed above, the BPA area may attain the 8-hour ozone standard at the end of 2007, based on data from 2005, 2006 and 2007. If, after notice and comment rulemaking, EPA determines that the area does attain the standard at the end of 2007, the requirement to submit SIPs related to attainment of the standard shall be suspended until such time as (1) the area is redesignated to attainment, at which time the requirements no longer apply; or (2) EPA determines that the area has violated the 8-hour ozone NAAQS (40 CFR 51.918).

IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the BPA marginal 8-hour ozone nonattainment area has failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the area will by operation of law be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA EPA is also proposing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. EPA proposes that the required SIP revisions be submitted as expeditiously as practicable, but no later than January 1, 2009.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* This proposed action to reclassify the BPA area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

[2] A vehicle inspection and maintenance (I/M) program would normally be listed as a requirement for an ozone moderate or above nonattainment area. However, the Federal I/M flexibility Amendments of 1995 determined the urbanized areas with populations less than 200,000 for 1990 (such as BPA) are not mandated to participate in the I/M program (60 FR 48027, September 18, 1995).

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of sections 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely proposes to determine that the BPA area had not attained by its applicable attainment date, and to reclassify the BPA area as a moderate ozone nonattainment area and to adjust applicable deadlines. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have ''Tribal implications'' as specified in Executive Order 13175. This action merely proposes to determine that the BPA area has not attained by its applicable attainment date, and to reclassify the BPA area as a moderate ozone nonattainment area and to adjust applicable deadlines The Clean Air Act and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely proposes to determine that the BPA area has not attained the standard by the applicable attainment date, and to reclassify the BPA area as a moderate ozone nonattainment area and to adjust applicable deadlines.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely proposes to determine that the BPA nonattainment area has not attained by its applicable attainment date, and to reclassify the BPA ''marginal'' nonattainment area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the BPA nonattainment area has not attained by its applicable attainment date, and to reclassify the BPA nonattainment area as a moderate ozone nonattainment area and to adjust applicable deadlines.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: October 22, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7–21313 Filed 10–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2007–0967; FRL–8489–2]

Determination of Nonattainment and Reclassification of the Baton Rouge 8-Hour Ozone Nonattainment Area; State of Louisiana; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Baton Rouge marginal 8-hour ozone nonattainment area has failed to attain the 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. If EPA finalizes this finding, the Baton Rouge area will then be reclassified, by operation of law, as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the Baton Rouge area would then be as expeditiously as practicable but no later than June 15, 2010. Once reclassified, Louisiana must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas, as required by the CAA. In this action, EPA is also proposing the schedule for the State's submittal of the SIP revisions required for moderate areas once the area is reclassified.

DATES: Comments must be received on or before November 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0967, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0967. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0967, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L),

Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays.

Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov.*

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I. What is the Background for this Proposed Action?

A. What Are the National Ambient Air Quality Standards?

The CAA requires EPA to establish a NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQSs for six common air pollutants referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

B. What Is the Standard for 8-Hour Ozone?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857, (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

> ''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

C. What Is a SIP and How Does it Relate to the NAAQS for 8-Hour Ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. Each contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

D. What Is the Baton Rouge Nonattainment Area, and What Is Its Current 8-Hour Ozone Nonattainment Classification?

The Baton Rouge 8-hour ozone nonattainment area consists of the Parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge in Louisiana.

For areas subject to Subpart 2 of the CAA, such as the Baton Rouge nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS and will be the same period as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years, Severe—15 or 17 years; and Extreme—20 years. The Phase I Ozone Implementation Rule (April 30, 2004, 69 FR 23951) provides the classification scheme for the 8-hour ozone NAAQS (40 CFR 51.903). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004 (April 30, 2004, 69 FR 23858).

The Baton Rouge area was initially designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified as ''marginal'' based on a design value of 0.086 ppm, with an attainment date of June 15, 2007 (April 30, 2004, 69 FR 23858). The design value of an area, which characterizes the severity of the air quality concern, is represented by the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period.

E. What Are the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications?

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether the ozone nonattinment area attained the ozone standard by that date.

For marginal, moderate, and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified by operation of law to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification. Different circumstances apply to severe and extreme areas.

II. What is EPA's Evaluation of the Baton Rouge Area's 8-Hour Ozone Data?

EPA makes attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Within the Baton Rouge area, ground-level ozone is measured at ten different sites. Data for the four sites whose design values exceed the standard is presented in Table 1. For the Baton Rouge ozone nonattainment area, the attainment determination is based on 2004–2006 air quality data. The area has a design value of 0.091 ppm, based on data from the LSU site (EPA site number 22–033–0003). Therefore, pursuant to section 181(b)(2) of the CAA, the Baton Rouge nonattainment area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—BATON ROUGE AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM)[1]

Site	4th Highest daily max			Design value 3 year average (2004–2006)
	2004	2005	2006	
LSU (22–033–0003)	0.091	0.097	0.085	0.091
Baker (22–033–1001)	0.087	0.084	0.092	0.087
Port Allen (22–121–0001)	0.082	0.086	0.088	
Carville (22–047–0012)	0.084	0.085	0.086	0.085
Pride (22–033–0013)	0.079	0.084	0.083	0.082
Capitol (22–033–0009)	0.074	0.082	0.084	0.080
Grosse Tete (22–047–0007)	0.076	0.088	0.087	0.083
Plaquemine (22–047–0009)	0.076	0.081	0.083	0.080
French Settlement (22–063–0002)	0.075	0.077	0.080	0.077
Dutchtown (22–005–0004)	0.082	0.078	0.088	0.082

[1] Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to two 1-year extensions of its attainment date based on the number of exceedances in the attainment year and if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. For the 8-hour standard, if an area's fourth highest daily maximum 8-hour average in the attainment year is 0.084 ppm or less (40 CFR 51.907), the area is eligible for up to two 1-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For Baton Rouge, the attainment year is 2006. In 2006, the fourth highest daily maximum 8-hour average was 0.092 ppm. Four monitoring sites (see Table 1) recorded values at 0.085 ppm or greater as the fourth highest daily maximum 8-hour ozone concentration for 2006. Based on this information, the Baton Rouge area currently does not qualify for a 1-year extension of the attainment date.

Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: The next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the Baton Rouge area's ozone design value at the time of today's notice is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.091 ppm. By contrast, the next higher classification for the Baton Rouge area is ''moderate''. Because ''moderate'' is a higher nonattainment classification than ''marginal'' under the CAA statutory scheme, upon the effective date of a final rulemaking, the Baton Rouge area will be reclassified by operation of law as ''moderate'', for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

III. What Action Is EPA Proposing?

A. Determination of Nonattainment, Reclassification of the Baton Rouge Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2), EPA is proposing to find that the Baton Rouge area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. If EPA finalizes this finding and it takes effect, the area shall be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after designation or June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which Louisiana will submit SIP revisions necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

B. Proposed Date for Submitting a Revised SIP for the Baton Rouge Area

EPA must address the schedule by which Louisiana is required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, the State must provide for implementation of all

control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification for the Baton Rouge area, January 1 is the beginning of the ozone monitoring season. As a result, EPA proposes that the required SIP revision be submitted by Louisiana as expeditiously as practicable, but no later than January 1, 2009. This timeline also calls for implementation of applicable controls no later than January 1, 2009.

A revised SIP must include the following moderate area requirements: (1) An attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (40 CFR 51.910), (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)), (5) a vehicle inspection and maintenance program (40 CFR 51.350), and (6) NO_X and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a). See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b).

IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the Baton Rouge marginal 8-hour ozone nonattainment area has failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the area will by operation of law be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA EPA is also proposing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. EPA proposes that the required SIP revision for Louisiana be submitted as expeditiously as practicable, but no later than January 1, 2009.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* This proposed action to reclassify the Baton Rouge area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of sections 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely proposes to determine that the Baton Rouge Area had not attained by its applicable attainment date, and to reclassify the Baton Rouge Area as a moderate ozone nonattainment area and to adjust applicable deadlines, thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have ''Tribal implications'' as specified in Executive Order 13175. This action merely proposes to determine that the Baton Rouge Area has not attained by its applicable attainment date, and to reclassify the Baton Rouge Area as a moderate ozone nonattainment area and to adjust applicable deadlines The Clean Air Act and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely proposes to determine that the Baton Rouge area has not attained the standard by the applicable attainment date, and to reclassify the Baton Rouge Area as a moderate ozone nonattainment area and to adjust applicable deadlines.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely proposes to determine that the Baton Rouge area has not attained by the applicable attainment date, and to reclassify the Baton Rouge area as a moderate ozone nonattainment area and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Baton

Rouge area did not attain the 8-hour ozone NAAQS by the applicable attainment date, to reclassify the Baton Rouge area as a moderate ozone nonattainment area and to adjust applicable deadlines.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: October 22, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7–21314 Filed 10–29–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 070817468–7594–01]

RIN 0648–AV91

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 20

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 20 (Framework 20) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 20 would maintain in effect the interim measures that were enacted by NMFS on June 21, 2007, to reduce the potential for overfishing the Atlantic sea scallop (scallop) resource and excessive scallop mortality resulting from deck loading. The action reduces the number of scallop trips to the Elephant Trunk Access Area (ETAA), and prohibits the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA. The proposed rule also clarifies that the current restriction on landing no more than one scallop trip per calendar day for vessels fishing under general category rules does not prohibit a vessel from leaving on a scallop trip on the same calendar day that the vessel landed scallops. Framework 20 would extend these interim measures, which are scheduled to expire on December 23, 2007, through the end of the scallop fishing year on February 29, 2008. Framework 20 would make the clarification of the restriction on landing more than one trip per calendar day permanent under the Scallop FMP.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on November 14, 2007.

ADDRESSES: You may submit comments, identified by RIN number 0648–AV91, by any one of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*;
- Fax: (978) 281–9135;
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scallop Framework 20.''

Instructions: all comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachment to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file format only.

Copies of Framework 20 and its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Interim measures currently in effect were enacted to supercede measures that were scheduled to go into effect on January 1, 2007, under Framework 18 to the FMP (Framework 18). The interim action was enacted in response to findings of the Scallop Plan Development Team (PDT), which advised the Council on November 7, 2006, that reducing the number of trips in the ETAA, delaying the opening, and prohibiting ''deckloading,'' would reduce the potential for overfishing the scallop resource in 2007. The Council voted in November 2006 to recommend that NMFS implement interim measures consistent with the PDT's memorandum. On December 22, 2006, (71 FR 76945) NMFS implemented an interim final rule adopting these recommendations. This interim final rule was extended on June 21, 2007, (72 FR 29889) and is scheduled to expire on December 23, 2007.

Framework 20 would maintain the provisions of the interim action that: (1) Reduced the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb); (2) reduced the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels would be increased from 16,800 lb (7,620 kg) per trip to 18,000 lb (8,165 kg) per trip); (3) reduced the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip; (4) reduced the general category scallop fleet ETAA trip allocation from 1,360 trips to 865 trips; and (5) prohibited the retention or deck loading (i.e., leaving a high volume of scallops on deck after leaving an access area so that the scallops can be shucked on the way in) of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA.

The Council developed Framework 20 to prevent the Framework 18 measures from reverting back into effect when the interim measures expire on December 23, 2007. If this were to happen, it would restore the higher trip allocations and allow additional effort by the fleet, resulting in overfishing for the last 2 months (January and February 2008) of the 2007 fishing year (FY). Such an outcome would undermine the effect of the interim measures in preventing overfishing.

Proposed Measures

1. ETAA Trip Reduction

Framework 20 would maintain the reduction in the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb (8,165 kg)); the reduction in the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels remains at 16,800 lb (7,620 kg) per trip); and the reduction in the occasional vessel possession limit from 10,500 lb

(4,763 kg) per trip to 7,500 lb (3,402 kg) per trip. The regulations at § 648.60(a)(5) published for Framework 18 specified that an occasional vessel's possession limit is 7,500 lb (3,402 kg) per trip. However, Framework 18 intended and analyzed a possession limit of 10,500 lb (4,763 kg) per trip for the 2007 FY. Framework 20 would also maintain the reduction in the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA.

Reducing the number of trips for scallop vessels in the ETAA would address the concern that overfishing of the scallop resource may occur in 2007. Although the biomass in the ETAA remains very high relative to the rest of the scallop resource, it is less abundant than was projected in Framework 18. As a result, even though the fishing mortality is expected to be lower than the target fishing mortality in the area, it would be high enough at the lower biomass to contribute to overfishing in 2007. Part-time vessels would have a trip reduction with an increase in the possession limit to ensure that the total access area catch for part-time vessels remains at 40 percent of the full-time access area catch, as intended by the FMP. Occasional vessels would have one trip to any access area, but have a possession limit of 7,500 lb (3,402 kg) for the trip, ensuring that the total access area catch for occasional vessels remains at 8.3 percent of the full-time access area catch. Reducing trips in the ETAA was contemplated in Framework 18 and the potential impacts of the trip reductions were fully analyzed in Framework 18.

2. Prohibition on Deckloading

Framework 20 maintains the prohibition on the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA for vessels on ETAA trips. Deckloading is the practice of loading the deck of a vessel with the scallop catch from several tows. Under the current Access Area regulations, vessels can deckload and leave the area, and the vessel crews can spend the time steaming home sorting and shucking scallops, thereby reducing overall trip costs. This can result in a vessel having more scallops on board than are necessary to achieve the possession limit. The excess scallops are discarded. In addition, due to deckloading, scallops remain on deck longer, increasing discard mortality. In the ETAA, deckloading may cause even higher scallop mortality, since catch rates are expected to be very high, there is a mix of scallop sizes in the area, and scallop crews may discard smaller scallops in favor of larger scallops. Although the amount of additional mortality cannot be estimated, prohibiting deckloading on ETAA trips is a complementary measure that will help prevent additional scallop mortality.

3. Regulatory Change

Framework 20 would also implement a regulatory change to make the regulations consistent with the original intent of Amendment 4 to the FMP (Amendment 4). Amendment 4 intended that general category scallop vessels could not land scallops on more than one trip per calendar day. NMFS implemented the scallop regulations consistent with this intent until it was recently discovered that the regulations, as written, prohibit such vessels from ''fishing for'' scallops more than once per calendar day. This prohibited a vessel from leaving on a scallop trip on a calendar day if scallops had previously been landed that day. The general category scallop industry is concerned that interpreting the regulation this way may encourage unsafe fishing behavior to avoid the ''one trip per calendar day'' restriction. Therefore, to make the regulations consistent with Amendment 4, NMFS is proposing a regulatory change that would prohibit a general category scallop vessel from landing scallops on more than one trip per calendar day, but would allow vessels to depart on a subsequent scallop trip on the same calendar day that the vessel landed scallops.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

Description of the Small Business Entities

The proposed regulations implementing Framework 20 would affect vessels with limited access scallop and general category permits. According to NMFS Northeast Region permit data as of October 2006, 351 vessels were issued limited access scallop permits, with 318 full-time, 32 part-time, and 1 occasional limited access permit issued. In addition, 2,501 open access general category permits were issued. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to landings data for the period 2004 to 2006. According to this information, annual revenue from scallops averaged over a million dollars per limited access vessel in 2005. Total revenues per vessel were higher when revenues from species other than scallops were included, but still averaged less than $3 million per vessel. Average scallop revenue per general category vessel was $88,702 in 2005, though it exceeded $240,000 when revenue from other species was included.

Proposed Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting, recordkeeping, or other compliance requirements associated with the measures proposed in Framework 20.

Economic Impacts of the Proposed Measures and Alternatives

The proposed regulations implementing Framework 20 were developed to ensure that scallop landings and economic benefits would be kept to sustainable levels. Therefore, overall positive economic impacts are expected as a result of preventing overfishing. The prohibition on deckloading on ETAA trips is expected to help prevent additional scallop mortality associated with discards and thus would improve yield, revenues, and economic benefits from the resource. The owners of vessels that fish for scallops would benefit over the long-term if overfishing is prevented. There was strong industry support for the proposed action in public testimony before the Council at the meeting when it adopted Framework 20.

A range of alternatives was considered in Framework 18 including: Scallop fishery specifications for 2006 and 2007 (open area days-at-sea and scallop access area trip allocations); scallop area rotation program adjustments; a seasonal closure of the

ETAA; and revisions to management measures that would improve administration of the FMP. Most of the alternatives in Framework 18 were not considered by the Council in Framework 20 because they would have been outside the scope of the action intended to implement the interim measures through the end of the 2007 fishing year. The only measure in Framework 18 relevant to Framework 20 is the measure that allowed the Regional Administrator to reduce the number of ETAA trips through a rulemaking procedure based on biomass trigger points and resulting trip reductions that were included in the scallop regulations. NMFS could not use that procedure because the trip reduction recommended by the Council was based on overall fishing mortality, not the specified trigger points in the regulations, and NMFS promulgated the interim rule for the ETAA. The economic impacts of the reduction of ETAA trips through the Framework 18 rulemaking procedure, and the no action alternative to that measure, were fully analyzed in Framework 18 and are the basis of the economic impacts analysis of Framework 20.

The only other alternative the Council considered in Framework 20 was therefore to take no action. If no action had been taken, the Framework 18 measures would revert back into effect, which would increase the number of trips for full-time scallop vessels in the ETAA to five trips (an increase of two trips) and general category vessels would be allocated 1,360 trips (an increase of 495 trips). There is a very high likelihood that the additional trips would be taken because the scallops can be caught efficiently in the ETAA and the value of scallops is high. This would increase the potential that the additional fishing activity during January and February 2008 would lead to overfishing in the 2007 FY. Overfishing would have had negative impacts on scallop biomass, with landings, revenues and economic benefits likely to decline in future years as a result. The Council found this to be unacceptable and adopted the reduced number of trips in the ETAA under Framework 20 to prevent this outcome. NMFS proposes regulations consistent with the Council's recommendation for the same reasons.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (i)(1) is removed and reserved, paragraph (i)(2) is revised, and paragraphs (h)(27), (i)(13), and (i)(14) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(h) * * *

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

(i) * * *

(1) [Reserved]

(2) Land scallops on more than one trip per calendar day.

* * * * *

(13) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2).

(14) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

* * * * *

3. In § 648.52, paragraph (e) is added to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(e) Owners or operators of a vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, are prohibited from possessing more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

§ 648.58 [Amended]

4. In § 648.58, paragraph (a) is removed and reserved.

5. In § 648.59, paragraphs (e)(1) and (e)(4) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(e) * * *

(1) From March 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 865 trips allocated for the period March 1, 2007, through February 29, 2008, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

* * * * *

6. In § 648.60, paragraphs (a)(3)(i), (a)(3)(ii)(B), (a)(5)(i), (d)(1)(v), (e)(1)(v), and (g)(3)(iv) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(a) * * *

(3) * * *

(i) *Limited Access Vessel trips*. (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels*. In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and three trips in the Elephant Trunk Access Area.

(C) *Part-time scallop vessels*. In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; or one trip in the Closed Area I Access Area and one trip in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area; or two trips in the Elephant Trunk Access Area.

(D) *Occasional scallop vessels*. An occasional scallop vessel may take one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(E) *Hudson Canyon Access Area trips*. In addition to the number of trips specified in paragraphs (a)(3)(i) (B) and (C) of this section, vessels may fish remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area in the 2006 and/or 2007 fishing year, as specified in § 648.59(a)(3). The maximum number of trips that a vessel could take in the Hudson Canyon Access Area in the 2005 fishing year was three trips, unless a vessel acquired additional trips through an authorized one-for-one exchange as specified in paragraph (a)(3)(ii) of this section. Full-time scallop vessels were allocated three trips into the Hudson Canyon Access Area. Part-time vessels were allocated two trips that could be distributed among Closed Area I, Closed Area II, and the Hudson Canyon Access Areas, not to exceed one trip in the Closed Area I or Closed Area II Access Areas. Occasional vessels were allocated one trip that could be taken in any Access Area that was open in the 2005 fishing year.

(ii) * * *

(B) Limited access scallop vessels involved in an exchange of Closed Area II and/or Nantucket Lightship Closed Area Access Area trips for the 2006 fishing year, and Elephant Trunk Access Area trips for the 2007 fishing year shall be subject to a reduction of the vessels' allocated trips so that the total number of allocated Elephant Trunk Access Area trips between two vessels that were involved in such an exchange shall be six for full-time vessels and four for part-time vessels in the 2007 fishing year. Reductions will be applied equally to both vessels' resulting Elephant Trunk Access Area allocation for the 2007 fishing year after the exchange is taken into account, unless the vessel giving Elephant Trunk Access Area trips to another vessel has one or zero Elephant Trunk Access Area trips remaining after the exchange. In such a case, the vessel that received the Elephant Trunk Access Area trips will be subject to a reduction of up to four Elephant Trunk Access Area trips.

* * * * *

(5) * * *

(i) *Scallop possession limits*. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in paragraphs (a)(5)(i)(A) and (B) of this section. No vessel declared into the Elephant Trunk Access Area as described in § 648.59(e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

(A) Up to 18,000 lb (8,165 kg) of shucked scallops for full-time and part-time scallop vessels.

(B) Up to 7,500 lb (3,402 kg) of shucked scallops for occasional scallop vessels.

* * * * *

(d) * * *

(1) * * *

(v) *Elephant Trunk Access Area*. From March 1, 2007, through February 29, 2008, the observer set-aside for the Elephant Trunk Access Area is 173,100 lb (78.5 mt).

* * * * *

(e) * * *

(1) * * *

(v) *Elephant Trunk Access Area*. From March 1, 2007, through February 29, 2008, the research set-aside for the Elephant Trunk Access Area is 346,200 lb (157 mt).

* * * * *

(g) * * *

(3) * * *

(v) *Elephant Trunk Access Area*. 346,000 lb (157 mt) in 2007.

* * * * *

[FR Doc. 07–5384 Filed 10–25–07; 2:44 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 209

Tuesday, October 30, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0040]

Codex Alimentarius Commission: Meeting of the 8th Session of the Codex Committee on Milk and Milk Products (CCMMP)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety and the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) are sponsoring a public meeting on January 17, 2008. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 8th Session of the Codex Committee on Milk and Milk Products (CCMMP) of the Codex Alimentarius Commission (Codex), which will be held in Queenstown, New Zealand, February 4–8, 2008. The Under Secretary for Food Safety and the AMS recognize the importance of providing interested parties the opportunity to obtain background information on the 8th Session of the CCMMP and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, January 17, 2008, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3074, South Agriculture Building, U.S. Department of Agriculture, 14th St. and Independence Avenue, SW., Washington, DC 20250. Documents related to the 8th Session of the CCMMP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

The U.S. Delegate to the 8th Session of the CCMMP, Duane R. Spomer, AMS, invites interested U.S. parties to submit their comments electronically to the following e-mail address *Susan.Sausville@usda.gov*.

FOR FURTHER INFORMATION ABOUT THE 8TH SESSION OF THE CCMMP CONTACT: Susan Sausville, Chief, AMS, Dairy Standardization; Telephone: (202) 720–9382; Fax: (202) 720–2643.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Syed Amjad Ali, International Issues Analyst; Telephone: (202) 205–7760; Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMMP was established to elaborate codes and standards for milk and milk products. The CCMMP is hosted by the Government of New Zealand.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 8th Session of the CCMMP will be discussed during the public meeting:

1. Matters Referred by the Codex Alimentarius Commission and other Codex Committees and Task Forces.
2. Draft Model Export Certificate for Milk and Milk Products.
3. Proposed Draft Amendment to the Codex Standard for Fermented Milks pertaining to Composite Fermented Milk Drinks.
4. Proposed Draft Standard for Processed Cheese.
5. Proposed Draft Amendment to the List of Additives of the Codex Standard for Creams and Prepared Creams.
6. Additive Listings for the Codex Standard for Fermented Milks (Flavored Fermented Milks.)
7. Discussion Paper on Sampling Plans for Milk Products in the Presence of Significant Measurement Errors.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the January 17, 2008, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 8th Session of the CCMMP, Duane R. Spomer (see **ADDRESSES**). Written comments should state that they relate to activities of the 8th Session of the CCMMP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic 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 accounts.

Done at Washington, DC, on: October 24, 2007.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E7–21315 Filed 10–29–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD

[September 10, 2007 through October 24, 2007]

Firm	Address	Date accepted for filing	Products
T.I. Industries	40 W. 12th Avenue, Lexington, NC 27292.	9/25/2007	Raw materials including wood, veneers, finishing materials, UV cured coating and hot transfer materials are used to manufacture.
Nortic, Inc	6099 Judd Road, Oriskany, NY 13424–4218.	9/27/2007	Plastic injection mold parts, primarily spools.
Tres Bonne, Inc	3841 First Avenue South, Seattle, WA 98134.	9/28/2007	Apparel including work wear, sports and outdoor wear, as well as children's wear. For example, women's and men's gloves, pants.
Rex Plastics, Inc	12515 NE 95th St., Vancouver, WA 98682.	9/28/2007	Manufactures plastic molded products.
Universal Forest Products Western Division, Inc.	2100 Avalon Street, Riverside, CA 92509.	10/1/2007	Concrete forming products, decking, railing.
Kings Prosperity L.P	4001 West Military Highway, McAllen, TX 78503.	10/1/2007	Injection molded vacuum cleaner parts.
Comtec Manufacturing Inc	101 DeLaum Road, St. Marys, PA 15857.	10/2/2007	Highly engineered structural powdered metal components.
Technology Design, Inc	548 S 1470 E, Springville, UT 84663.	10/2/2007	Injection molded plastic products.
Michigan Wheel Corporation	1501 Buchanan Avenue, Grand Rapids, MI 49507.	10/2/2007	Boat propellers for pleasure and commercial craft; industrial propellers for mixing and aerating applications.
Teton Homes Corporation	3283 North 9 Mile Road, Casper, WY 82604.	10/2/2007	Travel trailers for housing and camping.
Empire Die Casting	635 E. Highland Rd., Macedonia, OH 44056–2185.	10/2/2007	Aluminum, zinc, and magnesium die castings.
Air Quality Engineering, Inc	7140 Northland Drive, North Brooklyn, MN 55428.	10/5/2007	Sheet metal air cleaners and air filters.
Ernest Thompson & Company, Inc.	4531 Osuna Road, NE, Albuqurque, NM 87109.	10/7/2007	Wood furniture and kitchen cabinets.
MET Plastics, Inc	1701 Lee Street, Elk Grove, IL 60007.	10/9/2007	Plastic injection molded products
GAR Products, Inc	170 Lehigh Avenue, Lakewood, NJ 08701.	10/11/2007	Indoor and outdoor chairs for the restaurant and hotel industries.
Jeannette Shade & Novelty Company, Inc. dba.	215 North Fourth Street, Jeannette, PA 15644.	10/11/2007	Commercial lighting and decorative glass tile, bowls and sinks.
RIMA Manufacturing Company	3850 Munson Highway, Hudson, MI 49247.	10/11/2007	Valve parts and similar precision turned products.
Sheltech Plastics, Inc	80 Cambridge Street, Methuen, MA 01844.	10/16/2007	Custom vacuum formed and pressure formed plastic products.
The New Mayflower Corporation.	3 Maxson Drive, Old Forge, PA 18518.	10/17/2007	Manufactures men's tailored slacks, U.S. Postal uniforms, school uniforms, and US Navy pants for a variety of brand name resellers.
Loudspeaker Commponents, LLC.	7596 U.S. Highway 61, South Lancaster, WI 53813.	10/17/2007	Parts of speaker cones and dust caps.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10)

calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 24, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E7–21307 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Thermal Imaging Camera Reporting

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 31, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4896, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Government is preparing to remove the export licensing requirement for certain thermal imaging cameras to certain destinations. A new biannual reporting requirement will be imposed to allow the USG to verify that the cameras are continuing to be sold to appropriate end-users and that the relaxation in controls is not jeopardizing U.S. national security or foreign policy interests.

In June of 2007, the Bureau of Industry and Security (BIS) received emergency preapproval for this collection of information. However, the final version of the associated rule ''Revisions to License Requirements and License Exception Eligibility for Certain Thermal Imaging Cameras and Focal Plane Arrays,'' has not yet been published. BIS is seeking renewal of this collection authority so that publication of the final rule will not be further delayed by a lapse in the collection authority.

II. Method of Collection

The biannual reports are paper format and will be accepted via e-mail, facsimile or mail delivery.

III. Data

OMB Control Number: 0694–0133.

Form Number(s): None.

Type of Review: Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 60.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21346 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD58

Endangered Species; File No. 1591

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (Lisa Ballance, Responsible Official), 8604 La Jolla Shores Drive, La Jolla, CA 92038 has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 22, 2006, notice was published in the **Federal Register** (71 FR 55431) that a request for a scientific research permit to take green, loggerhead, and olive ridley sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

Researchers will study the species present at this foraging area to determine their abundance, size ranges, growth, sex ratio, health status, diving behavior, local movements, habitat use, and migration routes. Turtles will be captured using entanglement nets and each animal will be flipper and passive integrated transponder (PIT) tagged, measured, weighed, sexed, blood sampled, and tissue sampled. A subset of animals will be lavaged and have transmitters attached to their carapace.

A primary goal of the research will be to integrate data from genetic analysis, flipper tagging, and satellite telemetry to identify nesting beach origins of turtles occurring in San Diego Bay and contribute to the overall understanding of sea turtle stock structure in the Pacific Ocean. Researchers will compare current data with those collected in San Diego Bay since 1989 to determine growth rates of juveniles and adults, determine tag retention rates, and examine population abundance trends. Genetic studies based on blood and tissue samples are part of an international collaboration to define stock structure of sea turtles in the Pacific. Up to 85 green, 8 loggerhead, and 8 olive ridley sea turtles will be taken annually. The permit is issued for 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 24, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–21335 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the Agenda below.

DATES: The announced meeting is scheduled for: Wednesday, November 14, 2007 from 2 p.m.–4 p.m. EST.

ADDRESSES: Conference Call. Public access is available at SSMC Bldg 3, ROOM # 7836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Pearson, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, (301) 734–1066.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Wednesday, November 14, 2007—2 p.m.–4 p.m. EST.

Agenda

I. Consideration of a model for evaluating Sea Grant programs' performance
II. Consideration of the Panel's Charter
III. Report of the SAB's EOE Working Committee

Dated: October 24, 2007.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–21326 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD66

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet at the offices of At-Sea Processors Association.

DATES: The meeting will be held on November 12, 2007, from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the At-Sea Processors Association, 4039 21st Avenue West, Suite 400, Seattle, WA. Please call (206) 285–5139 for teleconference number.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee will review and provide comment to the Council on a proposed economic analysis to revise management of the ''other species'' groundfish assemblage into separate group specifications for sharks, skates, sculpins, squids, and octopuses, and possibly grenadiers. The proposed actions would require amending the groundfish fishery management plans for the Bering Sea / Aleutian Islands and Gulf of Alaska.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–21325 Filed 10–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of enumerated items from sources in the UK, unless otherwise restricted by statute.

EFFECTIVE DATE: This waiver is effective for one year, beginning November 14, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Glotfelty, OUSD(AT&L), Office of the Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting, Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone 703–697–9351.

SUPPLEMENTARY INFORMATION: Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation ''would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items'' and if he determines that ''that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.'' The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has had a Reciprocal Defense Procurement Memorandum of Understanding (MOU) with the UK since 1975, most recently renewed on December 16, 2004.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including section 8015 of the DoD Appropriations Act for Fiscal Year 2007 (Public Law 109–289). This waiver applies to procurements under solicitations issued during the period from November 14, 2007, to November 13, 2008. Similar waivers have been granted since 1998, most recently in 2006 (71 FR 39076, July 11, 2006). For contracts resulting from solicitations issued prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from November 14, 2007, to November 13, 2008, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from November 14, 2007, to November 13, 2008, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

List of Items To Which This Waiver Applies

1. Air circuit breakers.
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.
3. Gyrocompasses.
4. Electronic navigation chart systems.
5. Steering controls.
6. Pumps.
7. Propulsion and machinery control systems.
8. Totally enclosed lifeboats.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–21328 Filed 10–29–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket No. USN–2007–0051]

Proposed Collection; Comment Request

AGENCY: Headquarters, U.S. Marine Corps, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the U.S. Marine Corps announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 31, 2007.

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

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, write to Headquarters, U.S. Marine Corps (LFL), 2 Navy Annex, Room 3109, Washington, DC 20380–1775, or contact Captain David Nasse at (703) 695–8302.

Title and OMB Number: Camp Lejeune Notification Registry; OMB Control Number 0703–TBD.

Needs and Uses: The information collection requirement is used to obtain and maintain contact information of people who may have been exposed to contaminated drinking water aboard Marine Corps Base Camp Lejeune, NC, as well as other parties who are interested in the issue. The information will be used to provide notifications and updated information to such persons regarding possible contamination of the drinking water on Camp Lejeune.

Affected Public: U.S. Service Members (active, reserve, retired, and separated), military dependents, Federal government employees, and civilian personnel who were/are stationed, live(d), or were/are employed aboard Marine Corps Base Camp Lejeune, NC and may have been exposed to contaminated drinking water. Additionally, any person interested in the Camp Lejeune contaminated drinking water issue may also enter their contact information in the system.

Annual Burden Hours: 100.

Number of Respondents: 1000.

Responses per Respondent: 1.

Average Burden per Response: 6 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Camp Lejeune Notification Registry contains contact information of people who may have been exposed to contaminated drinking water aboard Marine Corps Base Camp Lejeune, NC, as well as other parties who are interested in the issue. The information will be used to provide notifications and updated information to such persons regarding possible contamination of the drinking water on Camp Lejeune.

Dated: October 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–5377 Filed 10–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Shock Trial of the MESA VERDE (LPD 19)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and regulations implemented by the Council on Environmental Quality (40 C.F.R. Parts 1500–1508), and Presidential Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS) on October 19, 2007. This EIS/OEIS evaluates the environmental effects for the shock trial of the MESA VERDE (LPD 19) at a site offshore of either Norfolk, Virginia; Mayport, Florida; or Pensacola, Florida. A Notice of Intent for this DEIS/OEIS was published in the **Federal Register** on March 12, 2004. The Navy will conduct three public hearings to receive oral and written comments on the Draft EIS/OEIS. Federal, State, and local agencies and interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this Draft EIS/OEIS.

DATES AND ADDRESSES: Public hearings have been scheduled as follows:

1. Tuesday, November 27, 2007, 7 p.m. to 9 p.m., Kirn Memorial Main Library, 301 East City Hall Avenue, Norfolk, VA.
2. Wednesday, November 28, 2007, 7 p.m. to 9 p.m., Pensacola Junior College, Hagler Auditorium, 1000 College Boulevard, Pensacola, FL.
3. Thursday, November 29, 2007, 7 p.m. to 9 p.m., Fletcher High School, 700 Seagate Avenue, Neptune Beach, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Don Shaver at 202–781–4864 during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The MESA VERDE (LPD 19) is the third ship in the new SAN ANTONIO (LPD 17) Class of nine planned amphibious transport dock ships being acquired by the Navy to meet Marine Air-Ground Task Force lift requirements. The Draft EIS/OEIS evaluates the environmental consequences of conducting a proposed shock trial of the MESA VERDE at an offshore location. The ship would be subjected to a series of up to four 4,536 kilogram (kg) (10,000 pound [lb]) explosive charge detonations in the spring/summer of 2008.

The Draft EIS/OEIS identifies and evaluates the potential environmental impacts of three alternative locations for conducting an at-sea shock trial offshore of Naval Station Norfolk, Virginia; Naval Station Mayport, Florida; or Naval Air Station Pensacola, Florida. These alternatives are compared with respect to project purpose and need, operational criteria, and environmental impacts.

The Notice of Intent (NOI) published for this EIS/OEIS in the **Federal Register** on 12 March 2004 identified the alternative location of offshore Pascagoula, in addition to the ''no action'' alternative, for analysis in this EIS/OEIS. The Base Realignment and Closure Act of 2005 (BRAC) identified Naval Station Pascagoula for closure. After the 2005 BRAC recommendation, the DON revisited the operational requirements for the Draft EIS/OEIS and identified offshore off Pensacola, Florida as an additional alternative shock trial location, removing the offshore Pascagoula alternative location from further study.

Navy has identified the preferred alternative of conducting the shock trial offshore of Mayport, Florida. This alternative would meet the project purpose and need, satisfy operational requirements, and potentially minimize environmental impacts.

The ''no action'' alternative does not meet the purpose and need because it would prevent the Navy from adequately assessing the survivability of this ship Class. The ship must undergo a shock trial because, although computer modeling and component testing have been undertaken, an at-sea shock trial would provide the best means to assess the shock response of the entire manned ship and the interaction of the ship's systems and components.

Environmental impacts that may occur from the proposed action include minor or temporary impacts to the physical and biological environments and existing human uses of the area. Additionally, there is a risk of impacts to marine mammals and sea turtles, which varies between proposed shock trial locations and seasons. However, protective measures will be established to minimize risk to marine mammals and sea turtles. The NMFS is concurrently evaluating Navy's request for a Letter of Authorization for the Incidental Take of Marine Mammals in

their regulatory role under the Marine Mammal Protection Act. Navy has initiated early, formal consultation with the NMFS under Section 7 of the Endangered Species Act.

The Draft EIS/OEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and interested parties. The Draft EIS/OEIS is available on the internet via the project Web site at: *http://www.mesaverdeeis.com.* The Draft EIS/OEIS is also available for public review at the following local libraries: Beaches Branch Library, 600 3rd Street, Neptune Beach, FL; Kirn Memorial Main Library, 301 East City Hall Avenue, Norfolk, VA; Jacksonville Main Library, 303 Laura Avenue, Jacksonville, FL; Pascagoula Public Library, 3214 Pascagoula Street, Pascagoula, MS; Pensacola Public Library, 200 West Gregory Street, Pensacola, FL; and St. Mary's Public Library, 100 Herb Bauer Drive, St. Mary's, GA.

Navy invites the general public, local governments, other federal agencies, and state agencies to submit written comments or suggestions concerning the alternatives and analysis addressed in the Draft EIS/OEIS. The public and government agencies are invited to participate in the public meetings where oral and written comments will be received. As a cooperating agency, a NMFS representative will be participating at the public meetings.

Comments should be sent to: MESA VERDE Shock Trial, Booz Allen Hamilton, Maritime Plaza, 1201 M St, SE., Washington, DC 20003. Comments may also be sent by electronic mail to the following address: *lpd17eis@bah.com.*

All written comments must be post marked or received by December 10, 2007, to ensure they become part of the official record. All comments will be responded to in the Final EIS/OEIS.

Dated: October 24, 2007.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–21327 Filed 10–29–07; 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 November 29, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 25, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: National Postsecondary Student Aid Study: 2008.

Frequency: One time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 90,572.

Burden Hours: 77,588.

Abstract: The 2008 National Postsecondary Student Aid Study is being conducted to meet the continuing need for national-level data about significant financial aid issues for students enrolling in postsecondary education. Information about financial aid policies and postsecondary affordability is critical to policymakers who determine the need analysis formulas for Pell Grants, maximum amounts for student loans and other need-based federal programs.

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 3511. 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. E7–21333 Filed 10–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice extending application deadline dates for Rehabilitation Training: Rehabilitation Long-Term Training programs.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.129B, E, F, H, L, P, Q, R, and W.

SUMMARY: The Assistant Secretary extends the deadline dates for the

submission of applications for several Rehabilitation Training: Rehabilitation Long-Term Training programs. In all of the affected competitions, the Assistant Secretary is making new awards for fiscal year (FY) 2008. The Assistant Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants affected by the wildfires in southern California. The extension of the application deadline date for these competitions is intended to help potential applicants compete fairly with other applicants under these programs.

Note: Information related to each of these competitions can be found under the chart entitled ''List of Programs Affected'' in the **SUPPLEMENTARY INFORMATION** section of this notice.

Eligibility: The extension of deadline dates in this notice applies to States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, that are located in a Federally-declared disaster area, as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema)*, and adversely affected by the wildfires in California. You must provide a certification in your application that you meet one of these criteria for submitting an application on the *Extended Deadline* and be prepared to provide appropriate supporting documentation, if requested. The submission of the electronic application serves as your attestation that you meet the criteria for submitting an application on the *Extended Deadline.*

DATES: The new deadline date for transmitting applications under each competition is listed with that competition in the chart entitled ''List of Programs Affected'' in the **SUPPLEMENTARY INFORMATION** section of this notice. As these programs are subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in this chart.

ADDRESSES: The address and telephone number for obtaining applications for, or information about, an individual program or competition are in the application notice for that program or competition. We have listed the date and **Federal Register** citation of the application notice for each program in the chart entitled ''List of Programs Affected.''

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the individual application notice. If we have not listed a TDD number, you may call the Federal Relay Service (FRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the most recent list and addresses of individual Single Points of Contacts (SPOCs) on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html*.

You can also find the list of SPOCs in the appendix to the Forecast of Funding Opportunities under the Department of Education Discretionary Grant Programs for Fiscal Year (FY) 2008. This is available on the Internet at: *http://www.ed.gov/funding.html*.

SUPPLEMENTARY INFORMATION: The following is specific information about each of the programs or competitions covered by this notice:

LIST OF PROGRAMS AFFECTEDOFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICESREHABILITATION SERVICES ADMINISTRATION

CFDA No. and name	Publication date and **Federal Register** citation	Original deadline for transmittal of applications	Extended deadline for transmittal of applications	Original deadline for intergovernmental review	Extended deadline for intergovernmental review
84.129B: Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling.	9/13/07 (72 FR 52358)	10/29/07	11/19/07	12/27/07	1/18/08
84.129E, F, H, L, P, Q and R: Rehabilitation Training: Rehabilitation Long-Term Training.	9/13/07 (72 FR 52362)	10/29/07	11/19/07	12/27/07	1/18/08
84.129W: Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development.	9/13/07 (72 FR 52366)	10/29/07	11/19/07	12/27/07	1/18/08

If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the individual application notices.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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: October 25, 2007.

William W. Knudsen,

Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–21347 Filed 10–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, December 3, 2007, 8 to 6 p.m.; Tuesday, December 4, 2007, 8 a.m. to 3:30 p.m.

ADDRESSES: Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Monday, December 3, 2007

- Perspectives from Department of Energy and National Science Foundation.
- Discussion on the Long Range Plan Report.
- Discussion of Program Performance Goals.
- Public Comment (10-minute rule).

Tuesday, December 4, 2007

- Continued Discussion on the Long Range Plan Report.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's *Office of Nuclear Physics* Web site for viewing.

Issued at Washington, DC on October 25, 2007.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–21293 Filed 10–29–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 28, 2007, 2 p.m.—8 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer, Christina Houston.
Establishment of a Quorum.
Welcome and Introductions, Ed Moreno.
Approval of Agenda.
Approval of Minutes of September 19, 2007, Board Meeting.
2:15 p.m. Board Business/Reports.
- Old Business, Ed Moreno.
- Report from Chair, J. D. Campbell.
- Report from Department of Energy, Christina Houston.
- Report from Executive Director, Menice Santistevan.
- Other Matters, Board Members.

New Business—Recommendations to Assistant Secretary James Rispoli (Prepared by EM SSAB Chairs at September Chairs' Meeting).
- Recommendation for EM SSAB Participation in the EM Budget Process.
- Recommendation for Long-Term Stewardship incorporated into new Environmental Management projects.

3 p.m. Break.
3:15 p.m. Committee Business/Reports
A. Environmental Monitoring, Surveillance and Remediation Committee, Pam Henline.
B. Waste Management Committee, Update on Spring NNMCAB Sponsored Forum, Ralph Phelps.
4 p.m. Reports from Liaison Members.
U.S. Environmental Protection Agency, Rich Mayer
DOE, George Rael.
Los Alamos National Security, LLC, Sue Stiger.
New Mexico Environment Department, James Bearzi.
5 p.m. Dinner Break.
6 p.m. Public Comment.
6:15 p.m. Consideration and Action on Recommendations to DOE, Ed Moreno.
6:30 p.m. Presentation on Proposed Responses to the 17 National Academies of Sciences' Recommendations Regarding Groundwater Monitoring Issues at Los Alamos National Laboratory (LANL).
7:15 p.m. Presentation on Quarterly Progress Review of Environmental Programs at LANL.
7:30 p.m. Round Robin on Board Meeting and Presentations, Board Members.
7:50 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., Ed Moreno.
8 p.m. Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on October 22, 2007.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–21290 Filed 10–29–07; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 15, 2007, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

6 p.m. Call to Order, Introductions, Review of Agenda, and Approval of September Minutes.
6:15 p.m. Deputy Designated Federal Officer's Comments.
6:30 p.m. Federal Coordinator's Comments.
6:35 p.m. Liaisons' Comments.
6:45 p.m. Review of Action Items.
6:50 p.m. Public Comments and Questions.
7 p.m. Presentations.
- DOE Findings on Area of Concern 4.

7:30 p.m. Subcommittee Reports.
- Water Disposition/Water Quality Subcommittee.
- Community Outreach Subcommittee.
- Long Range Strategy/Stewardship Subcommittee.
- Executive Committee.

7:45 p.m. Public Comments and Questions.
7:55 p.m. Administrative Issues: Motions, Review of Work Plan, and Review of Next Agenda.
8: p.m. Final Comments.
8:15 p.m. Adjourn.
Breaks Taken As Appropriate.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following website *http://www.pgdpcab.org/currentyear.htm*.

Issued at Washington, DC on October 22, 2007.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–21292 Filed 10–29–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 14, 2007, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting topic will be ''Low-Level/Mixed Low-Level Waste Disposition Strategy for the Oak Ridge Reservation.''

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on October 25, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–21294 Filed 10–29–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: November 28, 2007 from 2 p.m. to 3 p.m. EDT

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Acting Assistant Manager, Office of Commercialization and & Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs

Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on October 25, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–21291 Filed 10–29–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8488–7]

Proposed Consent Decree Modification, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Modification to Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed modification to a consent decree, to address a lawsuit filed by Environmental Defense: *Environmental Defense* v. *Environmental Protection Agency*, No. C 05 2090 (N.D.Cal.). On June 6, 2005, plaintiff Environmental Defense filed a complaint claiming that EPA had failed to perform a nondiscretionary duty to either grant or deny, within eighteen months of receipt, an August 11, 2003 petition submitted to EPA by Environmental Defense asking the Administrator to list diesel engine exhaust as a hazardous air pollutant under section 112(b)(3) of the Clean Air Act, 42 U.S.C. 7412(b)(3). Under the terms of the initial consent decree, EPA agreed to sign a notice for publication in the **Federal Register** that contained either a proposal to grant (in whole or in part) or a final determination that denies the petition by June 12, 2006. If EPA proposed to grant the petition, then EPA agreed to sign a final notice for publication in the **Federal Register** either granting or denying (in whole or in part) the petition by May 1, 2007. The original deadlines have been extended to January 7, 2008 and April 2, 2008, respectively, as a result of previous modifications to the original consent decree. Under the terms of the proposed modification, the deadlines above would be changed, respectively, to August 11, 2010 and May 11, 2011. However, EPA will not have to act on Environmental Defense's petition if EPA signs a notice for publication in the **Federal Register** of a proposed rule proposing to establish emissions standards for the emission of hazardous air pollutants from existing non-emergency stationary diesel engines of 300 horsepower or greater manufactured prior to 1996 pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412 by February 25, 2009, and signs a notice for publication in the **Federal Register** of a final rule establishing emission standards for such engines by February 10, 2010.

DATES: Written comments on the proposed consent decree modification must be received by *November 29, 2007.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–1070, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5583; fax number (202) 564–5603; e-mail address: *horowitz.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The consent decree modification would establish new deadlines by which date EPA must either grant or deny Environmental Defense's petition to list diesel exhaust as a hazardous air pollutant under section 112 of the CAA. Under the proposed modification, no later than August 11, 2010, EPA shall sign a notice for publication in the **Federal Register** either a proposal to grant or a final determination to deny the petition with a written explanation of the reasons for EPA's decision. If EPA proposes to grant the petition, then no later than May 11, 2011, EPA shall sign a final notice for publication in the **Federal Register** either granting or denying the petition. However, EPA will not have to act on Environmental Defense's petition if EPA signs a notice for publication in the **Federal Register** of a proposed rule proposing to establish emissions standards for the emission of hazardous air pollutants from existing non-emergency stationary diesel engines of 300 horsepower or greater manufactured prior to 1996 pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412 by February 25, 2009, and signs a notice for publication in the **Federal Register** of a final rule establishing emission standards for such engines by February 10, 2010.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed modification to the consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree modification should be withdrawn, the terms of the modification will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get A Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–1070) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of

Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 24, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–21321 Filed 10–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0771; FRL–8486–3]

RIN 2040–AE89

Notice of Availability of Preliminary 2008 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Preliminary 2008 Effluent Guidelines Program Plan.

SUMMARY: EPA establishes national, technology-based regulations known as effluent guidelines and pretreatment standards to reduce pollutant discharges from categories of industry discharging directly to waters of the United States or discharging indirectly through Publicly Owned Treatment Works (POTWs). The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b) require EPA to annually review these effluent guidelines and pretreatment standards. This notice presents EPA's 2007 review of existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the Preliminary 2008 Effluent Guidelines Program Plan (''preliminary 2008 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. EPA is soliciting comment on its preliminary 2008 Plan and on its 2007 annual review of existing effluent guidelines and pretreatment standards and industrial categories not currently regulated by effluent guidelines and pretreatment standards.

DATES: If you wish to comment on any portion of this notice, EPA must receive your comments by December 31, 2007.

ADDRESSES: Submit your comments, data and information for the 2007 annual review of existing effluent guidelines and pretreatment standards and the preliminary 2008 Plan, identified by Docket ID No. EPA–HQ–OW–2006–0771, by one of the following methods:

(1) *www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *E-mail: OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2006–0771.

(3) *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2006–0771. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2006–0771. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2006–0771. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal 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 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 you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

The following key document provides additional information about EPA's annual reviews and the Preliminary 2008 Effluent Guidelines Program Plan: ''Technical Support Document for the Preliminary 2008 Effluent Guidelines Program Plan,'' EPA–821R–07–007, DCN 04247, October 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION:

How is this document organized?

The outline of this notice follows.

I. General Information
II. Legal Authority
III. What is the Purpose of This **Federal Register** Notice?
IV. Background
V. EPA's 2007 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VI. EPA's 2008 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards
VIII. The Preliminary 2008 Effluent Guidelines Program Plan Under Section 304(m)
IX. Request for Comment and Information

I. General Information

A. Does This Action Apply to Me?

This notice provides a statement of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements.

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

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, et seq., and in particular sections 301(d), 304(b), 304(g), 304(m), 306, and 307(b), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, and 1317.

III. What Is the Purpose of This Federal Register Notice?

This notice presents EPA's 2007 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g) and 307(b). This notice also provides EPA's preliminary thoughts concerning its 2008 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the preliminary 2008 Effluent Guidelines Program Plan (''preliminary 2008 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment.

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards (''effluent guidelines'') that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using technologies that represent the appropriate level of control. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated

by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: Biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. See Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than are currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) and (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. See CWA section 304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Are EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guidelines selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87

Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges.''). Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan.[1] See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. *See E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers ''from time to time, as control technology, processes, operating methods, or other alternatives change.'' See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.'' (Although section 307(b) only requires EPA to revise existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.*, EPA will publish the 2008 annual pretreatment standards review in the notice containing the Agency's 2008 annual review of existing effluent guidelines and the final 2008 Plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2007 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

A. What Process Did EPA Use To Review Existing Effluent Guidelines and Pretreatment Standards Under CWA Section 301(d), 304(b), 304(g), and 307(b)?

1. Overview

In its 2007 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 56 point source categories and over 450 subcategories. This review consisted of a screening level review of all existing industrial categories based on the hazard associated with discharges from each category and other factors identified by EPA as appropriate for prioritizing effluent guidelines and pretreatment standards for possible revision. EPA used this review to confirm the identification of the four industrial categories prioritized for further review in the final 2006 Effluent Guidelines Program Plan (December 21, 2006; 71 FR 76644) and to list the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE).

As reported in the final 2006 Effluent Guidelines Program Plan (December 21, 2006; 71 FR 76644), EPA also continued or began work on four detailed studies as part of the 2007 annual review: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460).[2]

Together, these reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d) and 304(b) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA is not identifying any existing categories for effluent guidelines rulemaking at this time.

2. How did EPA's 2006 annual review influence its 2007 annual review of point source categories with existing effluent guidelines and pretreatment standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.*, by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for additional scrutiny in subsequent years. For example, during its 2005 and 2006

[1] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to *promulgate* effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA*, 437 F.Supp.2d 1137 (C.D. Ca, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(C) is limited to providing a *schedule* for taking final action in effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and has appealed this decision.

[2] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.B, EPA is including hospitals in its review of the Health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

annual reviews EPA started a detailed study of the Steam Electric Power Generating (Part 423) category. At the conclusion of the 2006 annual review EPA indicated that it would continue the detailed study of the Steam Electric Power Generating (Part 423) category and begin detailed studies for the following three industrial categories: Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory); and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). In addition, EPA identified two other industrial categories, Ore Mining and Dressing (Part 440) and Textile Mills (Part 410), at the conclusion of the 2006 annual review as candidates for ''preliminary category reviews'' in the 2007 review based on the toxic discharges reported to the Toxics Release Inventory (TRI) and Permit Compliance System (PCS). These are categories for which EPA lacks sufficient data to determine whether revision would be appropriate and for which EPA is performing a further assessment of pollutant discharges before starting a detailed study. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA published the findings from its 2006 annual review with its final 2006 Plan (December 21, 2006; 71 FR 76644), making the data collected available for public comment. Docket No. EPA–HQ–OW–2004–0032. EPA used the findings, data and comments on the 2006 annual review to inform its 2007 annual review. The 2007 review also built on the previous reviews by continuing to use the screening methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges.

3. What actions did EPA take in performing its 2007 annual reviews of existing effluent guidelines and pretreatment standards?

a. Screening-Level Review

The first component of EPA's 2007 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2007 annual reviews. In its 2007 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (*i.e.*, highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from TRI and PCS. EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI or PCS, EPA multiplies the pounds of discharged pollutants by pollutant-specific TWFs. This calculation results in an estimate of the discharged toxic-weighted pound equivalents, which EPA then uses as its estimate of the hazard posed by these toxic and non-conventional pollutant discharges to human health or the environment. For the 2007 annual reviews, EPA used the most recent PCS and TRI data (2004). The full description of EPA's methodology for the 2007 screening-level review is presented in the Technical Support Document (TSD) for the preliminary 2008 Plan (*see* DCN 04247) and in the Docket (*see* EPA–HQ–OW–2006–0771) accompanying this notice.

EPA is continuously investigating and solicits comment on how to improve its analyses. In particular, EPA recently conducted a peer review of the TWF methodology and the Agency's use of TWFs in effluent guidelines program planning. An independent panel of scientific experts was asked to provide comment on the appropriateness of the TWF calculations and the quality and hierarchy of the data used in developing individual TWFs. EPA is currently in the process of reviewing and responding to the peer reviewer's comments. EPA is also in the process of updating the following document, Draft Toxic Weighting Factor Development in Support of CWA 304(m) Planning Process, EPA–HQ–OW–2004–0032–1634, to address some of the peer reviewers concerns. EPA plans to release the peer review report with the Agency's response as soon as it's completed, but no later than when the final 2008 304(m) Plan is released. EPA also is exploring how best to communicate the uncertainty inherent with incomplete data regarding individual TWFs. EPA will continue to update individual TWFs as new information becomes available.

EPA also developed a quality assurance project plan (QAPP) for its use of TRI and PCS data in the 2007 annual review to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (*see* DCN 04422). EPA used the following document to develop the QAPP for this annual review: ''EPA Requirements for QA Project Plans (QA/R–5), EPA–240–B01–003.'' Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.*, verifying 2004 discharge data reported to TRI and PCS) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, correct TRI and PCS data for facilities that EPA had identified in its screening-level review as the significant dischargers of nutrients and of toxic and non-conventional pollution.

Based on this methodology, EPA prioritized for potential revision industrial categories that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those categories with the lowest estimates of toxic-weighted pollutant discharges a lower priority for revision (*i.e.*, industrial categories marked ''(3)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice).

In order to further focus its inquiry during the 2007 annual review, EPA assigned a lower priority for potential revision to categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (*i.e.*, industrial categories marked ''(1)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice). For example, EPA excluded facilities that are associated with the Chlorine and Chlorinated Hydrocarbon (CCH) Manufacturing effluent guidelines rulemaking (formerly known as the ''Vinyl Chloride and Chlor-Alkali Manufacturing'' effluent guidelines rulemaking) currently underway from its 2006 hazard assessment of the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Inorganic Chemicals point source categories to which CCH facilities belong.

Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose

seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new industrial activity within a category for which EPA has recently revised effluent guidelines or pretreatment standards, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply more scrutiny to the category in a subsequent review. EPA identified no such instance during the 2007 annual review.

EPA also applied a lower priority for potential revision at this time to categories for which EPA lacked sufficient data to determine whether revision would be appropriate. For industrial categories marked ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice, EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges associated with these categories. EPA will seek additional information on the discharges from these categories in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment (''preliminary category review'') provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. See the appropriate section in the TSD for the preliminary 2008 Plan (DCN 04247) for EPA's data needs for these industrial categories.

For industrial categories marked ''(4)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice, EPA had sufficient information on the toxic-weighted pollutant discharges associated with these categories to start or continue a detailed study of these industrial categories in the 2007 annual review. EPA intends to use the detailed study to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. In the 2007 annual review, EPA began or continued detailed studies of four such categories.

As part of its 2007 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges (*i.e.*, categories marked ''(2)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice), EPA applied a lower priority for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national effluent guidelines rulemaking. Individual permit requirements can be better tailored to these few facilities and may take considerably less time and resources to establish than a national effluent guidelines rulemaking. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 04247). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. For example, EPA developed and distributed a 2007 technical document to NPDES permit writers in order to support the development of effluent limitations for facilities in the dissolving kraft (Subpart A) and dissolving sulfite (Subpart D) subcategories of the pulp and paper point source category (40 CFR Part 430) (*see* DCN 04167). As of the beginning of 2006, there were four affected facilities in these two subcategories, two in Florida and one each in Georgia and Washington. EPA indicated in the final 2006 Plan (*see* December 21, 2006; 71 FR 76651–76652) that it would provide support to permit writers in establishing facility-specific effluent limits for these subcategories based on their Best Professional Judgment (BPJ) in lieu of finalizing its 1993 effluent guidelines rulemaking (*see* December 17, 1993; 58 FR 44078). In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments in previous biennial planning cycles urging the Agency to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did indirectly account for the effects of successful voluntary programs because any significant reductions in pollutant discharges should be reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

As was the case in previous annual reviews, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 56 existing industrial categories. However, EPA believes that its analysis of hazard is useful for assessing the effectiveness of existing technologies because it focuses on the amount and significance of pollutants that are still discharged following existing treatment. Therefore, by assessing the hazard associated with discharges from all existing categories in its screening-level review, EPA was indirectly able to assess the possibility that further significant reductions could be achieved through new pollution control technologies for these categories. In addition, EPA directly assessed the availability of technologies for certain industries that were prioritized for a more in-depth review as a result of the screening level analysis. See DCN 04247.

Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the affordability of treatment or process technologies because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on readily available economic data. In the past, EPA has gathered information regarding technologies and economic achievability through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA believes it is appropriate to set priorities based on hazard and other screening-level factors identified above, and to directly consider the availability and affordability of technology only in conducting the more in-depth reviews of prioritized categories. For these prioritized categories, EPA may conduct surveys or other PRA-governed data collection activities in order to better inform the decision on whether effluent guidelines are warranted. Additionally, EPA is working to develop tools for directly assessing technological and economic achievability as part of the screening-level review in future annual reviews under section 301(d), 304(b), and 307(b) (*see* EPA–HQ–OW–2004–0032–2344). EPA solicits comment on how to best identify and use screening-level tools for assessing technological and economic achievability on an industry-specific basis as part of future annual reviews.

In summary, through its screening level review, EPA focused on those point source categories that appeared to offer the greatest potential for reducing hazard to human health or the environment, while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revision at this time. This enabled EPA to concentrate its resources on conducting more in-depth reviews of certain industries prioritized as a result of the screening level analysis, as discussed below (*see* section V.A.3.b and c).

b. Further Review of Prioritized Categories

In the publication of the final 2006 Plan EPA identified two additional categories with potentially high TWPE discharge estimates for further investigation (''preliminary category review'') in the 2007 annual review: Ore Mining and Dressing (Part 440) and Textile Mills (Part 410) (*i.e.*, EPA identified these categories with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 76657 of the final 2006 Plan). From its 2007 annual review, EPA is identifying the Centralized Waste Treatment (Part 437) and Waste Combustors (Part 444) categories for preliminary category reviews in the 2008 annual review.

In conducting these preliminary category reviews EPA uses the same types of data sources used for the detailed studies but in less depth. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. EPA is not conducting a detailed study for these categories at this time because EPA needs additional information regarding these industries to determine whether a detailed study is warranted.

c. Detailed Study of Four Categories

In addition to conducting a screening-level review of all existing categories, EPA started or continued detailed studies of four categories: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues during its 2007 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants discharged from these sources and the toxic weights associated with these discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA is relying on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) monitoring data included in facility applications for NPDES permit renewals (Form 2C data); (7) EPA effluent guidelines technical development documents; (8) relevant EPA preliminary data summaries or study reports; (9) technical literature on pollutant sources and control technologies; (10) information provided by industry including industry conducted survey and sampling data; and (11) stakeholder comments (*see* DCN 04247). Additionally, in order to evaluate available and affordable treatment technology options for the coalbed methane extraction industry sector, EPA intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for its review and approval prior to publication of the final 2008 Plan.

d. Public Comments

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket for its 2007 annual review at the time of publication of the final 2006 Plan to provide the public with an opportunity to submit additional information to assist the Agency in its 2007 annual review. These public comments are in the supporting docket (EPA–HQ–OW–2006–0771, *www.regulations.gov*) and summarized in the TSD for the preliminary 2008 Plan (*see* DCN 04247).

B. What Were EPA's Findings From its 2007 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

1. Screening-Level Review

In its 2007 screening level review, EPA considered hazard—and the other factors described in section A.3.a. above—in prioritizing effluent guidelines for potential revision. See Table V–1 in section V.B.4 of today's notice for a summary of EPA's findings with respect to each existing category; see also the TSD for the preliminary 2008 Plan (''TSD''). Out of the categories subject only to the screening level review in 2007, EPA is not identifying any for effluent guidelines rulemaking

at this time, based on the factors described in section A.3.a above and in light of the effluent guidelines rulemakings and detailed studies in progress.

In the 2007 annual review EPA listed the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). The TSD presents a summary of EPA's review of these eleven industrial categories (*see* DCN 04247).

2. Detailed Studies

In its 2007 annual review, EPA started or continued detailed studies of four industrial point source categories with existing effluent guidelines and pretreatment standards: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), and Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). EPA is investigating whether the pollutant discharges reported to TRI and PCS for 2004 accurately reflect the current discharges of the industry. EPA is also analyzing the reported pollutant discharges, and technology innovation and process changes in these industrial categories. Additionally, EPA is considering whether there are industrial activities not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. EPA will use these detailed studies to determine whether EPA should identify in the final 2008 Plan (or a future Plan) any of these industrial categories for possible revision of their existing effluent guidelines and pretreatment standards. EPA's reviews of three of these four categories are described below and its review of hospitals is described in section VII.B (Health Services Industry detailed study).

a. Steam Electric Power Generating (Part 423)

The Steam Electric Power Generating effluent guidelines (40 CFR 423) apply to a subset of the electric power industry, namely those facilities ''primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium.'' See 40 CFR 423.10. EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (*see* November 19, 1982; 47 FR 52290).

EPA previously found that facilities in the Steam Electric Power Generating point source category collectively discharge relatively high amounts of toxic pollutants (as measured in toxic-weighted pound equivalents (TWPE)). See Tables 5–3 and 5–4 of the TSD for the final 2006 Plan, EPA–HQ–OW–2004–0032–2782, and Section 5.4.4.7 of the TSD for the final 2004 Plan, EPA–HQ–OW–2003–0074–1346 through 1351. The 2007 annual review again identified this category as the second-largest discharger of toxic pollutants (*see* DCN 04247). EPA also determined that PCS and TRI data provide an incomplete picture of the wastewaters generated by the regulated steam electric industry. For example, EPA anticipates greater amounts of nitrogen compounds, selenium, and other metals, most of which are not regulated by the effluent guidelines, and therefore, may not be reported to TRI or PCS, in steam electric wastewaters as a result of the increasing use of air pollution controls (*see* Interim Detailed Study Report for the Steam Electric Power Generating Point Source Category, November 2006, EPA–HQ–OW–2004–0032–2781). Consequently, EPA focused on supplementing its review of PCS and TRI data for this category with additional data collection as described below and in the supporting docket (*see* DCN 04247).

The detailed study for the Steam Electric Power Generating point source category is mainly focused on: (1) Characterizing the mass and concentrations of pollutants in wastewater discharges from coal-fired steam electric facilities; and (2) identifying the pollutants that comprise a significant portion of the category's TWPE discharge estimate and the corresponding industrial operation. Waste streams of particular interest include cooling water, fly ash and bottom ash wastes, coal pile runoff, and discharges from wet air pollution control devices [*e.g.*, wet flue gas desulfurization (FGD)]. EPA's previous annual reviews have identified that: (1) The TWPE discharge estimate for this category is predominantly driven by the metals present in wastewater discharges; and (2) the waste streams contributing the majority of these metals are associated with ash handling and wet FGD systems (*see* EPA–HQ–OW–2004–0032–2781). Other potential sources of metals include coal pile runoff, metal/chemical cleaning wastes, coal washing, and certain low volume wastes. EPA is collecting data for the detailed study through facility inspections, wastewater sampling, a data request that was sent to a limited number of companies, and various secondary data sources (*see* DCN 04711).

EPA is conducting wastewater sampling of ash ponds and FGD wastewater treatment systems at several steam electric facilities. Samples collected are being analyzed for metals and classical pollutants, such as total suspended solids and nitrogen. EPA selected the plants for sampling based on characteristics and process configurations of interest. Factors taken into consideration include the type of fuel, type of wet FGD systems in operation, fly ash handling practices, nitrogen oxides (NO_X) controls (*e.g.*, selective catalytic reduction systems), and wastewater treatment technologies. See the following document for information about the sample collection methodologies, analytes of interest, and laboratory analytical methods: ''Generic Sampling and Analysis Plan for Coal-Fired Steam Electric Power Plants,'' DCN 04296.

EPA also collected facility specific information using a data request conducted under authority of CWA section 308 (*see* DCN 04711). EPA sent this data request to nine companies that operate a number of coal-fired power plants with wet FGD systems. The data request complements the wastewater sampling effort as it collects facility-specific information about wastewaters EPA is not sampling. Additionally, the data request collects detailed information about wastewater generation rates and management practices for wastewaters included in EPA's sampling program. The data request seeks information on selected wastewater sources, air pollution controls, wastewater management and treatment practices, water reuse/recycle, and treatment system capital and operating costs.

b. Coal Mining (Part 434)

As discussed in the ''Notice of Availability of Final 2006 Effluent Guidelines Program Plan'' EPA is conducting a detailed study during the 2007 and 2008 annual reviews to evaluate the merits of comments by states, industry, and a public interest group that urged revisions to pollutant limitations in the Coal Mining effluent guidelines (40 CFR Part 434) (*see* December 21, 2006; 71 FR 76644–76667). The Interstate Mining Compact Commission, which represents mining agencies in 35 states, together with a few individual state agencies, and a few

mining companies, asked EPA to remove the current manganese limitations and allow permittees to employ best management practices as necessary to reduce manganese discharges based on the quality of receiving waterbodies.

The public interest group, the Environmental Law and Policy Center, asked EPA to place greater controls on coal mining discharges of sulfates, chlorides, mercury, cadmium, manganese, selenium, and other unspecified pollutants.

State and industry commentors cited the following factors in support of their comments: (1) New, more stringent coal mining reclamation bonding requirements on post-closure discharges; (2) evidence that current manganese limitations are more stringent than necessary to protect aquatic life; (3) perception that high cost of manganese treatment is causing permittees to default on their post-closure bonds; and (4) perception that treatment with chemical addition may complicate permit compliance, especially after a mine is closed. The public interest group referenced a study by EPA Region 5 on potential adverse impacts of the discharge of sulfates on aquatic life (*see* DCN 2487).

EPA initiated the Coal Mining Detailed Study in January 2007. The study follows the framework presented in the Detailed Study Plan, a draft of which the Agency placed into the docket (see DCN 2488) during the Fall of 2006. EPA revised and finalized the Detailed Study Plan in April 2007 to reflect public comments. The study will evaluate treatment technologies, costs, and pollutant discharge loads, as well as the effects of manganese and other pollutants on aquatic life. The study will also address the question of whether bonds are being forfeited because of the cost of manganese treatment by examining bonding and trust fund requirements, past bond forfeiture rates, future potential bond forfeiture rates, and the issues related to state assumption of long-term water treatment responsibilities for mines where the bonds have been forfeited. As outlined in the Detailed Study Plan, EPA has framed study questions based on public comment, identified data sources to help answer the study questions, developed a methodology for estimating treatment costs and discharge loads, and initiated data collection activities with the Interstate Mining Compact Commission, state agencies, and the Office of Surface Mining, Reclamation, and Enforcement within the U.S. Department of the Interior.

The Coal Mining Detailed Study consists of several interim products which will be summarized in the 2008 final report: An industry financial profile which will include information about the types and locations of mines, ownership, and revenues; a summary of state and federal permitting requirements; a summary of bonding and trust fund requirements for control of water discharges from post-mining sites; an analysis of bond forfeiture and the consequences for the states; an analysis of treatment technologies, costs, and pollutant discharge loads; and an environmental summary of the aquatic life effects of manganese and other pollutants.

During 2007, EPA plans to complete data collection, complete the industry financial profile, begin analysis of bonding and trust fund issues, and begin analysis of treatment costs and discharge loads. During 2008, EPA will complete analysis of bonding and trust fund issues, complete estimates of treatment costs and discharge loads, complete its analysis of bond defaults, complete the summary of environmental impacts, and complete the final report.

EPA will use the results of the Coal Mining Detailed Study, which will be summarized in the 2008 annual review, to help decide appropriate regulatory steps.

c. Oil and Gas Extraction (Part 435) (Only To Assess Whether To Include Coalbed Methane Extraction as a New Subcategory)

As discussed in the 2006 annual review, EPA is conducting a detailed study of the coalbed methane industry to determine whether to revise the effluent guidelines for the Oil and Gas Extraction category to include limits for this potential new subcategory (*see* December 21, 2006; 71 FR 76656). The coalbed methane (CBM) industrial sector is an important part of the Nation's domestic source of natural gas. In 2004, CBM accounted for about 10.4% of the total U.S. natural gas production and is expanding in multiple basins across the Nation. Currently, the Department of Energy's Energy Information Administration (EIA) expects CBM production to remain an important source of domestic natural gas over the next few decades. Based on Bureau of Land Management (BLM) and States' projections this will likely involve over 100,000 CBM wells. The growth in the CBM industrial sector can be explained by the decrease in drilling and transmission costs in getting the CBM to market, clarity of gas ownership, and the increase of long-term natural gas prices. See Section 6 of the TSD for the final 2006 Plan, EPA–HQ–OW–2004–0032–2782, December 2006. EPA identified the CBM extraction industry as a potential new subcategory of the Oil and Gas Extraction category (40 CFR 435) in the 2006 annual review (*see* December 21, 2006; 71 FR 76656).

Coalbed methane (CBM) extraction requires removal of large amounts of water from underground coal seams before CBM can be released. CBM wells have a distinctive production history characterized by an early stage when large amounts of water are produced to reduce reservoir pressure which in turn encourages release of gas; a stable stage when quantities of produced gas increase as the quantities of produced water decrease; and a late stage when the amount of gas produced declines and water production remains low (*see* EPA–HQ–OW–2004–0032–1904). The quantity and quality of water that is produced in association with CBM development will vary from basin to basin, within a particular basin, from coal seam to coal seam, and over the lifetime of a CBM well.

Pollutants often found in these wastewaters include chloride, sodium, sulfate, bicarbonate, fluoride, iron, barium, magnesium, ammonia, and arsenic. Total dissolved solids (TDS) and electrical conductivity (EC) are bulk parameters used for quantifying the total amount of dissolved solids in a wastewater and that may also be used to quantify and control the amount of pollutants in CBM produced waters. Equally important in preventing environmental damage is controlling the sodicity of the CBM produced waters. Sodicity is often quantified as the sodium adsorption ratio (SAR), which is expressed as the ratio of sodium ions to calcium and magnesium ions, and is an important factor in controlling the produced water's suitability for irrigation and its potential for degrading soils. All of these parameters can potentially affect environmental impacts as well as potential beneficial uses of CBM produced water.

Impacts to surface water from discharges of CBM produced waters can be severe depending upon the quality of the CBM produced waters. Saline discharges have variable effects depending on the biology of the receiving stream. Some waterbodies and watersheds may be able to absorb the discharged water while others are sensitive to large amounts of low-quality CBM water. For example, large surface waters with sufficient dilution capacity or marine waters are less sensitive to saline discharges than smaller freshwater surface waters. Discharge of

these CBM produced waters may also cause erosion and in some cases irreversible soil damage from elevated TDS concentrations and SAR values. This may limit future agricultural and livestock uses of the water and watershed.

Currently, regulatory controls for CBM produced waters vary from State to State and permit to permit (*see* EPA–HQ–OW–2004–0032–2782, 2540). There is very limited permit information (*e.g.*, effluent limits, restrictions) in PCS and TRI for this industrial sector. Consequently, EPA is gathering additional information from State NPDES permit programs and industry on the current regulatory controls across the different CBM basins.

EPA indicated in the 2006 annual review that it will need to gather more specific information as part of a detailed review of the coalbed methane industry in order to determine whether it would be appropriate to conduct a rulemaking to potentially revise the effluent guidelines for the Oil and Gas Extraction category to include limits for CBM. In particular, EPA will need to collect technical, economic, and environmental data from a wide range of CBM operations (*e.g.*, geographical differences in the characteristics of CBM-produced waters, current regulatory controls, potential environmental impacts, availability and affordability of treatment technology options). Accordingly, EPA intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, et seq. EPA is working with stakeholders in the design of this industry survey (*see* DCN 04247). EPA solicits comment on the potential scope and methodology of this ICR. See section IX.C for a list of questions that EPA will use to develop the ICR. EPA expects to distribute the ICR in late summer of 2008.

EPA is also collecting discharge related information from five site visit trips to support this detailed study (*see* DCN 04247), and collecting data from other secondary sources to supplement its current understanding of the CBM industrial sector. EPA is specifically gathering data on available and affordable beneficial use and treatment technology options, and potential impacts of CBM produced water discharges. A summary of the data collected for this detailed study is provided in the TSD for the 2007 annual review.

3. Results of Preliminary Category Reviews

During the 2006 annual review, EPA identified two categories with potentially high TWPE discharge estimates for preliminary category review: Ore Mining and Dressing (Part 440) and Textile Mills (Part 410) (*i.e.*, EPA identified these categories with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 76657 of the final 2006 Plan). EPA concluded its preliminary category review of the Textile Mills category in the 2007 annual review and has determined that the Textile Mills category is not among those industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE) (*see* DCN 04247). As such, it has a low priority for effluent guideline revision at this time. EPA has yet to complete its preliminary category review of the Ore Mining and Dressing category. Section IX of this notice and the TSD lists the data and information that EPA would like to collect on the pollutant discharges and potential treatment technology options for the Ore Mining and Dressing category in order to complete this preliminary category review.

Additionally and as noted above, EPA identified two additional categories for preliminary category review as a result of the 2007 annual review: Centralized Waste Treatment (Part 437) and Waste Combustors (Part 444). EPA applied less scrutiny to these categories in the 2002, 2004, and 2006 biennial planning cycles as EPA effluent guidelines and pretreatment standards for these categories were promulgated in 2000. As discussed in section V.A.3.a, EPA generally applies less scrutiny to industrial categories for which EPA has promulgated effluent guidelines or pretreatment standards within the past seven years of the current biennial review. However, because this seven year period has elapsed and because of the relative high hazard ranking of these categories, EPA plans to conduct a preliminary category review of both categories in its 2008 annual review. Section IX and the TSD list data and information that EPA would like to collect on the pollutant discharges and potential treatment technology options for these two categories in order to complete these preliminary category reviews.

EPA is not identifying any of these three categories (Ore Mining and Dressing, Centralized Waste Treatment, and Waste Combustors) for an effluent guidelines rulemaking in this preliminary 2008 Plan. However, EPA is identifying these categories for new or on-going preliminary category reviews in the 2008 annual review (*i.e.*, these categories are marked with ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice). The docket accompanying this notice presents a summary of EPA's findings on these three industrial categories (*see* DCN 04247).

4. Summary of 2007 Annual Review Findings

In its 2007 annual review, EPA reviewed all categories subject to existing effluent guidelines and pretreatment standards in order to identify appropriate candidates for revision. Based on this review, and in light of effluent guidelines rulemakings and detailed studies currently in progress, EPA is not identifying any existing categories for effluent guidelines rulemaking. EPA is, however, conducting detailed studies for four existing categories: Steam Electric Power Generating, Coal Mining, Oil and Gas Extraction (only with respect to coalbed methane), and Hospitals (part of the Health Services Industry detailed study).

A summary of the findings of the 2007 annual review is presented below in Table V–1. This table uses the following codes to describe the Agency(s findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking, or a rulemaking is currently underway.

(2) Revising the national effluent guidelines or pretreatment standards is not the best tool for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard priority based on data available at this time (*e.g.*, not among industries that cumulatively comprise 95% of reported hazard in TWPE units).

(4) EPA intends to continue a detailed study of this industry in its 2008 annual review to determine whether to identify the category for effluent guidelines rulemaking.

(5) EPA is continuing or initiating a preliminary category review because incomplete data are available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD (DCN 04247) for EPA's data needs for industries in this category.

TABLE V–1.—FINDINGS FROM THE 2007 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR Part	Findings†
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(5)
9	Coal Mining‡	434	(1) and (4)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(3)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals[3]	460	(4)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals‡‡	415	(1) and (3)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(3)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(3)
36	Oil and Gas Extraction††	435	(1) and (4)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers‡‡	414	(1) and (3)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(2)
42	Petroleum Refining	419	(3)
43	Pharmaceutical Manufacturing	439	(1)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(3)
47	Porcelain Enameling	466	(3)
48	Pulp, Paper, and Paperboard	430	(2)
49	Rubber Manufacturing	428	(3)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generating	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(3)
54	Timber Products Processing	429	(3)
55	Transportation Equipment Cleaning	442	(3)
56	Waste Combustors	444	(5)

[3] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.D, EPA is including hospitals in its review of the Health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

† Note: The descriptions of the "Findings" codes are presented immediately prior to this table.

‡ Note: Two codes (''(1)'' and ''(4)'') are used for this category as both codes are applicable to this category and do not overlap. The first code (''(1)'') refers to the recent effluent guidelines rulemaking (January 23, 2002; 67 FR 3370), which created two new subcategories [Coal Remining (Subpart G) and Western Alkaline Coal (Subpart H)]. The second code (''(4)'') refers to the on-going detailed study described above that is examining the issues identified by commenters to the preliminary 2006 Plan, which are different from those addressed in the previous rulemaking.

† † Note: Two codes (''(1)'' and ''(4)'') are used for this category as both codes are applicable to this category and do not overlap. The first code (''(1)'') refers to the recent effluent guidelines rulemaking (January 22, 2001; 66 FR 6850), which established BAT limitations and NSPS for non-aqueous drilling fluids. The second code (''(4)'') refers to the on-going detailed study described above that is examining the issues identified by commenters to the preliminary 2006 Plan, which are different from those addressed in the previous rulemaking.

‡ ‡ Note: Two codes (''(1)'' and ''(3)'') are used for this category as both codes are applicable to this category and do not overlap. The first code (''(1)'') refers to the on-going effluent guidelines rulemaking for the Chlorinated Hydrocarbon (CCH) manufacturing sector, which includes facilities currently regulated by the OCSPF and Inorganics effluent guidelines. The second code (''(3)'') indicates that the remainder of the facilities in these two categories do not represent a hazard priority at this time.

VI. EPA's 2008 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual reviews of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b), and 304(g) with the publication of preliminary Plans and biennial Plans under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2007 review. The information gathered during the 2007 annual review, including the identification of data gaps in the analysis of certain categories with existing regulations, in turn, provides a starting point for EPA's 2008 annual review. See Table V–1 in section V.B.4 of today's notice. In 2008, EPA intends to again conduct a screening-level analysis of all 56 categories and compare the results against those from previous years. EPA will also conduct further review of the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). Additionally, EPA intends to continue detailed studies of the following categories with existing effluent guidelines and pretreatment standards: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory) and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). EPA is identifying three categories (Ore Mining and Dressing, Centralized Waste Treatment, and Waste Combustors) for a preliminary category review in the 2008 annual review. EPA invites comment and data on the four detailed studies, the three preliminary category reviews, and all remaining point source categories.

VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

A. EPA's Evaluation of Pass Through and Interference of Toxic and Non-conventional Pollutants Discharged to POTWs

All indirect dischargers are subject to general pretreatment standards (40 CFR 403), including a prohibition on discharges causing ''pass through'' or ''interference.'' See 40 CFR 403.5. All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced ''pass through'' or ''interference'' and such a violation is likely to recur. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. EPA has promulgated such pretreatment standards for 35 industrial categories.

Historically, for most effluent guidelines rulemakings, EPA determines the potential for ''pass through'' by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by wastewater treatment options that EPA is evaluating as the bases for categorical pretreatment standards (January 28, 1981; 46 FR 9408).

The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(i). To determine the potential for ''interference,'' EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (*e.g.*, type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system, the POTW treatment system, or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (*e.g.*, batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

If EPA determines a category of indirect dischargers causes pass through or interference, EPA would then consider the BAT and BPT factors (including ''such other factors as the Administrator deems appropriate'') specified in section 304(b) to determine whether to establish pretreatment standards for these activities. Examples of ''such other factors'' include a consideration of the magnitude of the hazard posed by the pollutants discharged as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs. Additionally, EPA would consider whether other regulatory tools (*e.g.*, use of local limits under Part 403) or voluntary measures would better control the pollutant discharges from this category of indirect dischargers. For example, EPA relied on a similar evaluation of ''pass through potential'' in its prior decision not to

promulgate national categorical pretreatment standards for the Industrial Laundries industry. See 64 FR 45071 (August 18, 1999). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' See 64 FR 45077 (August 18, 1999).

EPA reviewed TRI data in order to identify industry categories without categorical pretreatment standards that are discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations (*see* DCN 04247). This review did not identify any such industrial categories. EPA also evaluated stakeholder comments and pollutant discharge information in the previous annual reviews to inform this review. In particular, commenters on the 2004 and 2006 annual reviews raised concerns about discharges of emerging pollutants of concern such as endocrine disruptors and mercury discharges from dentists and health service facilities and urged EPA to consider establishing effluent guidelines and pretreatment standards for such discharges. In response to these comments, EPA investigated the Health Services Industry in its 2006 annual review and found that it did not have readily available information to make an informed decision on the potential for ''pass through'' or ''interference.'' Consequently, EPA identified this industrial category for detailed study in its 2007 and 2008 annual reviews. EPA also solicits comment and data on all industrial sectors not currently subject to categorical pretreatment standards for its 2008 review. Finally, EPA solicits comment on methods for aggregating pollutant discharge data collected by pretreatment programs to further inform its future review of industry categories without categorical pretreatment standards.

B. Health Services Industry Detailed Study

The Health Services Industry includes establishments engaged in various aspects of human health (*e.g.* hospitals, dentists, long-term care facilities) and animal health (*e.g.*, veterinarians). Health services establishments fall under SIC major group 80 ''Health Services'' and industry group 074 ''Veterinary Services.'' According to the 2002 Census, there are over 475,000 facilities in the Health Services Industry (*see* EPA–HQ–OW–2004–0032–1615). EPA is including the following sectors within the Health Services Industry in its detailed study: Offices and Clinics of Dentists; Doctors and Mental Health Practitioners; Nursing and Personal Care Facilities (long-term care facilities); Hospitals and Clinics; Medical Laboratories and Diagnostic Centers; and Veterinary Care Services (*see* August 29, 2005; 70 FR 51054).

All these sectors require services to be delivered by trained professionals for the purpose of providing health care and social assistance for individuals or animals. These entities may be free standing or part of a hospital or health system and may be privately or publicly owned. The services can include diagnostic, preventative, cosmetic, and curative health services.

The vast majority of establishments in the health services industries are not subject to categorical limitations and standards. In 1976, EPA promulgated 40 CFR 460 which only applies to direct discharging hospitals with greater than 1,000 occupied beds. Part 460 did not establish pretreatment standards for indirect discharging facilities.

In evaluating the health services industries to date, EPA has found little readily available information. Both PCS and TRI contain sparse information on health care service establishments. For 2002, PCS only has data for two facilities which are considered ''major'' sources of pollutants and only Federal facilities in the healthcare industry are required to report to TRI. In 1989, EPA published a Preliminary Data Summary (PDS) for the Hospitals Point Source Category (*see* EPA–HQ–OW–2004–0032–0782). Also, EPA's Office of Enforcement and Compliance Assistance (OECA) published a Healthcare Sector Notebook in 2005 (*see* EPA–HQ–OW–2004–0032–0729). In addition, industry and POTWs have conducted studies to estimate pollutant discharges for some portions of this industry (e.g., dentists) (*see* EPA–HQ–OW–2004–0032–0772).

Based on preliminary information, major pollutants of concern in discharges from health care service establishments include solvents, mercury, pharmaceuticals, endocrine-disrupting compounds (EDCs), and biohazards (*e.g.*, items contaminated with blood) (*see* EPA–HQ–OW–2004–0032–0729). The majority of the mercury originates from the following sources: amalgam used in dental facilities and medical equipment, laboratory reagents, and cleaning supplies used in healthcare facilities (*see* EPA–HQ–OW–2004–0032–0038 and 2391). EPA found little to no quantitative information on wastewater discharges of emerging pollutants of concern such as pharmaceuticals and EDCs but was able to identify some information on biohazards (*see* DCN 04274).

As described above, the Health Services Industry is expansive and contains approximately half a million facilities. Because of the size and diversity of this category and other resource constraints, EPA decided to focus its detailed study on certain subcategories of dischargers. EPA selected its focus areas, for the most part, to respond to stakeholder concerns. The focus areas are:

- *Dental mercury:* EPA is focusing its evaluation on mercury discharges from the offices and clinics of dentists due to the potential hazard and bioaccumulative properties associated with mercury.
- *Unused pharmaceuticals:* EPA is focusing its evaluation on unused or leftover pharmaceuticals from health service facilities due to the growing concern over the discharge of pharmaceuticals into water and the potential environmental effects.

Unused pharmaceuticals include dispensed prescriptions that patients do not use as well as materials that are beyond their expiration dates. It includes both human and veterinary drugs (including certain pesticides such as flea, tick, and lice controls). As a point of clarification, the term ''unused pharmaceuticals'' does not include excreted pharmaceuticals. In particular, EPA is evaluating disposed unused pharmaceutical practices from the following sectors:

- Physicians offices
- Nursing and personal care facilities (including long-term care facilities);
- Veterinary care services; and
- Hospitals and clinics.

The Agency notes that it has an overall interest in mercury reduction and on July 5, 2006, issued a report titled, ''EPA's Roadmap for Mercury,'' (*see* DCN 03035). Among other things, EPA's report highlights mercury sources and describes progress to date in addressing mercury sources. Similarly, assessing pharmaceuticals in wastewater is part of the Agency's Strategic Plan (2006–2011) to meet its goals of clean and safe water, (*see http://www.epa.gov/ocfo/plan/plan.htm*). EPA is concerned about pharmaceuticals in the environment and is working on this issue in many different areas. Currently, the Agency is: (1) Developing analytical methods to measure pharmaceuticals in wastewater and biosolids; (2) studying the health and ecological effects of

pharmaceuticals on aquatic life and their occurrence in fish; and (3) engaged in determining the significance of consumer disposal of drugs to wastewater. Additionally, the Agency is considering amending its hazardous waste regulations to add hazardous pharmaceuticals to the universal waste system to facilitate its oversight of the disposal of pharmaceutical waste (40 CFR 273) (*see* RIN 2050–AG39, April 30, 2007; 72 FR 23170).

While stakeholders and EPA are concerned about EDC discharges, EPA has found only limited data on EDCs. In order to fill in some of these data gaps, in conjunction with its Health Services Industry detailed study, EPA is conducting a POTW study that, among other things, has the goal of developing wastewater analytical methods for certain pollutants, characterizing the presence of chemicals such as surfactants and pharmaceuticals in POTW wastewaters and evaluating POTW treatment technology effectiveness in reducing such pollutant discharges. To the extent that the results of the POTW studies become available during the term of this Health Services Industry detailed study, EPA will include relevant information in this study.

The Health Services Study is described in more detail in *EPA's Draft Detailed Study Plan for the Health Services Industry* (*see* DCN 05067) and *Overview of EPA's Detailed Study of the Health Services* (*see* DCN 05080). As explained there, EPA is researching the following questions/topics as they relate to disposal of mercury and unused pharmaceuticals into municipal sewer systems:

- What are the current industry practices in regards to disposal of unused pharmaceuticals and mercury? To what extent are each of these practices applied? What factors drive current practices?
- Are there federal, state, or local requirements or guidance for disposal of unused pharmaceuticals and/or mercury? What are these requirements?
- How are control authorities currently controlling (or not) disposal of unused pharmaceuticals and mercury via wastewater?
- To what extent do POTWs report pass through or interference problems related to unused pharmaceuticals or mercury discharges?
- What technologies are available: (1) As alternatives to wastewater disposal; and (2) to control pollutant discharges. Is there any qualitative or quantitative information on their efficiency?
- What Best Management Practices (BMPs) are used as alternatives to wastewater disposal and/or to control discharges and is there any qualitative or quantitative information on their efficiency?
- Is there any quantitative or qualitative information on the costs associated with identified technologies and/or BMPs?

1. Dental Mercury

Across the United States, states and municipal wastewater treatment plants (publicly owned treatment works (POTWs)) are working toward the goal of reducing discharges of mercury into collection systems. Many studies have been conducted in an attempt to identify the sources of mercury entering these collection systems. According to the 2002 *Mercury Source Control and Pollution Prevention Program Final Report* prepared for the National Association of Clean Water Agencies (NACWA), dental clinics are the main source of mercury discharges to POTWs. The American Dental Association (ADA) estimated in 2003 that 50% of mercury entering POTWs was contributed by dental offices.

EPA estimates there are approximately 130,000 dental offices in the United States—almost all of which discharge their wastewater exclusively to POTWs. Mercury in dental wastewater originates from waste particles associated with the placement and removal of amalgam fillings. Most dental offices currently use some type of basic filtration system to reduce the amount of mercury solids passing into the sewer system. However, best management practices and the installation of amalgam separators may reduce discharges even further.

Some states, regions, and POTWs have already implemented or are considering alternatives to reduce mercury discharges from dental offices. For example, a number of states have enacted legislation requiring the installation and operation of amalgam separators or use of best management practices (*see* DCN 04668). EPA Region 5 published guidance for permitting dental mercury discharges (*see* DCN 05024). The ADA has also adopted and published best management practices for its members. On October 2, 2007, the ADA updated its best management practices to include the use of amalgam separators (*see* DCN 05087). See DCN 04668 for a compilation of the information EPA has collected to date on existing guidance and requirements for dental mercury.

In 2007, EPA has focused its efforts on collecting and compiling information on current mercury discharges from dental offices, best management practices (BMPs), and control technologies such as amalgam separators. For control technologies and BMPs, EPA has looked at the frequency with which each is currently used; their effectiveness in reducing discharges to POTWs; and the capital and annual costs associated with their installation and operation (*see* DCN 04851 and 04852). EPA encourages all stakeholders to review the information collected to date and provide additional information, if available. EPA is particularly interested in quantitative information on the effectiveness and costs of implementing best management practices.

At this time, EPA does not know if its investigation will lead to the development of national, categorical pretreatment standards for dental mercury discharges. While this is a possibility, EPA is aware of a number of successful local programs and has identified that there are many opportunities for pollution prevention and adoption of BMPs without federal regulation. It appears that the dental industry is already actively working towards voluntarily reducing its mercury discharges.

2. Unused Pharmaceuticals

Stakeholders have expressed concern over the discharge of pharmaceuticals into water and its environmental effects. Recent studies have indicated the presence of pharmaceuticals in waters of the U.S. See Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams, USGS Fact Sheet FS–027–02, June 2002 (*see* DCN 04854). Recent studies have also shown the presence of pharmaceuticals directly downstream of POTWs (*see* DCN 05071). To date, EPA has found little quantitative information on the origin of pharmaceuticals in municipal wastewaters. There is even less data on the quantity of pharmaceuticals entering and leaving wastewater treatment plants. The discharge of pharmaceuticals to these treatment plants, with few exceptions, is not currently regulated or monitored.

Health Services Industry facilities (*e.g.*, hospitals, veterinarians, doctors, and long-term care facilities) may dispose of unused, expired, and unwanted medications (''unused pharmaceuticals'') down the drain or toilet, which then may pass through the POTW and on to surface waters. Given this concern, EPA plans to collect information from the Health Services Industry to better understand pharmaceutical discharges to POTWs and to make informed decisions. POTWs are not specifically designed to remove the wide range of

pharmaceuticals, and often the treatment plant removal efficiencies are unknown. The full spectrum of pharmaceuticals occurring in POTW effluent is not yet known, and for those that are present, the POTW removal efficiency is a function of the treatment technology employed and will vary from drug to drug. As a result, unused pharmaceuticals may have the potential to cause interference or to pass through municipal wastewater treatment plants.

In order to obtain further quantitative information on unused pharmaceuticals in Health Service Industry wastewaters, EPA plans to send a data request to targeted long-term care facilities, hospitals, and veterinarians. EPA is interested in obtaining the records facilities keep to track disposal of unused pharmaceuticals and their quantities. EPA especially wants to know how much and how often unused pharmaceuticals are disposed of via the sink or toilet, and what drives such practices.

There are best management practices (BMPs) and alternatives to disposing of pharmaceuticals into POTWs via sinks and toilets. Alternative disposal options include hazardous waste incinerators, regulated medical waste incinerators, and non-hazardous landfills (i.e., trash). Also, there are pharmacy take back programs via the mail and physical drop off locations (*e.g.*, reverse distribution brokers or centers). These take back programs are typically only available for pharmaceuticals that have not been sold and are not available to consumers. EPA is exploring the utility of take back programs and has given a grant to the University of Maine Center on Aging to devise, implement and evaluate a mail back plan for consumers to return unused over the counter and prescription medications. A network of 75 distribution points located at pharmacies will provide for mailer pick up and drop offs. Informational materials for pharmacists, staff and consumers regarding the mailers will be developed and distributed. In addition, the pilot will test the effectiveness of an educational campaign about the hazards to life, health, and the environment posed by improper storage and disposal of unused mediations.

Many of the current disposal practices are driven by Federal requirements or guidance. In addition to Federal rules, there are state and local policies that influence disposal of unused pharmaceuticals. EPA will continue to evaluate disposal alternatives in context of the existing requirements which affect disposal decisions.

At this time, EPA does not have enough information to know if this study will lead to the development of a national, categorical pretreatment standard for unused pharmaceuticals. While this is a possibility, EPA is gathering information on pollution prevention opportunities and BMPs that may provide a reasonable alternative to federal regulation. To aid EPA in its assessment of unused pharmaceuticals from the Health Services Industry, EPA requests comment on current practices. See section IX.

VIII. The Preliminary 2008 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA is publishing this preliminary 2008 Plan for public comment prior to this publication of the final 2008 Plan.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

1. Schedule for 2007 and 2008 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. This preliminary 2008 Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: EPA will coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2007 annual review is the review cycle ending upon the publication of this preliminary 2008 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, *e.g.*, by identifying candidates for ELG revision for which EPA can schedule rulemaking in the Plan, or by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2007 annual review along with the preliminary 2008 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2008 and the final 2008 Plan.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Inorganic Chemicals (to address discharges from Vinyl Chloride and Chlor-Alkali facilities identified for effluent guidelines rulemaking in the final 2004 Plan, now termed the ''Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing'' rulemaking) and Concentrated Animal Feeding Operations (rulemaking on BCT technology options for controlling fecal coliform and new source performance standards). EPA emphasizes that identification of the rulemaking schedules for these effluent guidelines does not constitute a final decision to revise the guidelines. EPA may conclude at the end of the formal rulemaking process—supported by an administrative record and following an opportunity for public comment—that effluent guidelines revisions are not appropriate for these categories. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time.

B. Identification of Potential New Point Source Categories Under CWA Section 304(m)(1)(B)

The final Plan must also identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 99–50,

Water Quality Act of 1987, Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges''). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B), providing for final action on such rulemaking not later than three years after the identification of the category in a final Plan.[4] See CWA section 304(m)(1)(C).

EPA is currently conducting rulemakings to determine whether to establish effluent guidelines for three potential new categories (*see* September 2, 2004; 69 FR 53705). Two of these categories—Airport Deicing Operations and Drinking Water Treatment—were identified as potential new categories in the final 2004 Plan. EPA initiated rulemaking for the third category—Construction and Development—because it was directed to do so by a district court order. *NRDC et al.* v. *EPA,* No. 04–8307, order (C.D. Ca., December 6, 2006). Although EPA respectfully disagrees with this decision, and does not believe that it is required to promulgate effluent guidelines for this potential new category, EPA is conducting the rulemaking ordered by the court pending appeal of the Court's decision. For the reasons discussed below, EPA is not at this time proposing to identify any other potential new categories for effluent guidelines rulemaking and therefore is not scheduling effluent guidelines rulemaking for any such categories in this preliminary Plan.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI and PCS. Facilities with data in TRI and PCS are identified by a four-digit SIC code (*see* DCN 04247). EPA performs a crosswalk between the TRI and PCS data, identified with the four digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is currently regulated by existing effluent guidelines (*see* DCN 04247). EPA also relied on comments received on its previous 304(m) plans to identify potential new categories. EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below.

First, section 304(m)(1)(B) specifically applies only to ''categories of sources'' for which EPA has not promulgated effluent guidelines. Because this section does not define the term ''categories,'' EPA interprets this term based on the use of the term in other sections of the Clean Water Act, legislative history, and Supreme Court case law, and in light of longstanding Agency practice. As discussed below, these sources indicate that the term ''categories'' refers to an industry as a whole based on similarity of product produced or service provided, and is not meant to refer to specific industrial activities or processes involved in generating the product or service. EPA therefore identifies in its biennial Plan only those new industries that it determines are properly considered stand-alone ''categories'' within the meaning of the Act—not those that are properly considered potential new subcategories of existing categories based on similarity of product or service.

The use of the term ''categories'' in other provisions of the CWA indicates that a ''category'' encompasses a broad array of industrial operations related by similarity of product or service provided. For example, CWA section 306(b)(1)(A) provides a list of ''categories of sources'' (for purposes of new source performance standards) that includes ''pulp and paper mills,'' ''petroleum refining,'' ''iron and steel manufacturing,'' and ''leather tanning and finishing.'' These examples suggest that a ''category'' is intended to encompass a diversity of facilities engaged in production of a similar product or provision of a similar service. *See also* CWA section 402(e) and (f) (indicating that ''categories'' are comprised of smaller subsets such as ''class, type, and size''). In the effluent guidelines program, EPA uses these factors, among others, to define ''subcategories'' of a larger industrial category.

The legislative history of later amendments to CWA section 304 indicates that Congress was aware that there was a distinction between ''categories'' and ''subcategories'' in effluent guidelines. *See Leg. Hist: Senate Committee on Environment and Public Works, A Legislative History of the Clean Water Act of 1977,* prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress (Comm. Print 1978) at 455 (indicating that BAT calls for the examination of ''each industry category or subcategory''). *See also Chemical Manufacturers' Association* v. *EPA,* 470 U.S. 116, 130 (1985) (interpreting this legislative history as ''admonish[ing] [EPA] to take into account the diversity within each industry by establishing appropriate subcategories.''). Therefore, in light of Congress' awareness of the distinction between categories and subcategories, EPA reasonably assumes that Congress' use in 1987 of the term ''categories'' in section 304(m)(1)(B) was intentional. If Congress had intended for EPA to identify potential new subcategories in the Plan, it would have said so. Congress' direction for EPA to identify new ''categories of sources'' cannot be read to constrain EPA's discretion over its internal planning processes by requiring identification of potential new ''subcategories'' in the Plan. *See Norton* v. *Southern Utah Wilderness Alliance et al,* 124 S Ct. 2373, 2383 (2004) (finding that a statutory mandate must be sufficiently specific in order to constrain agency discretion over its internal planning processes).

Moreover, the distinction between a category and a subcategory has long been recognized by the Supreme Court. In *Chemical Manufacturers' Association* v. *EPA,* the Court recognized that categories are ''necessarily rough-hewn'' (*id.* at 120) and that EPA establishes subcategories to reflect ''differences among segments of the industry'' based on the factors that EPA must consider in establishing effluent limitations. *Id.* at 133, n. 24. *See also Texas Oil and Gas Assn.* v. *EPA,* 161 F.3d 923, 939 (5th Cir. 1998) (''The EPA is authorized—indeed, is required—to account for substantial variation within an existing category * * * of point sources.''). Indeed, the effluent guidelines considered by the Supreme Court in *Du Pont* case was divided into 22 subcategories, each with its own set of technology-based limitations, reflecting variations in processes and pollutants. *Id.* at 22 and nn. 9 and 10. *See also id.* at 132 (noting that legislative history ''can be fairly read to allow the use of subcategories based on factors such as size, age, and unit processes.'').

EPA's interpretation of the term ''categories'' is consistent with longstanding Agency practice. Pursuant to CWA section 304(b), which requires EPA to establish effluent guidelines for ''classes and categories of point sources,'' EPA has promulgated effluent guidelines for 56 industrial ''categories.'' Each of these ''categories'' consists of a broad array of facilities that produce a similar product or perform a similar service—and is broken down into smaller subsets, termed ''subcategories,'' that reflect variations

[4] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to *promulgate* effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA,* 437 F.Supp.2d 1137 (C.D. Ca, 2006). However, EPA continues to beileve that the mandatory duty under section 304(m)(l)(c) is limited to providing a *schedule* for concluding the effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and has appealed this decision.

in the processes, treatment technologies, costs and other factors associated with the production of that product that EPA is required to consider in establishing effluent guidelines under section 304(b). For example, the ''Pulp, Paper and Paperboard point source category'' (40 CFR part 430) encompasses a diverse range of industrial facilities involved in the manufacture of a like product (paper); the facilities range from mills that produce the raw material (pulp) to facilities that manufacture end-products such as newsprint or tissue paper. EPA's classification of this ''industry by major production processes used many of the statutory factors set forth in CWA Section 304(b), including manufacturing processes and equipment (*e.g.*, chemical, mechanical, and secondary fiber pulping; pulp bleaching; paper making); raw materials (*e.g.*, wood, secondary fiber, non-wood fiber, purchased pulp); products manufactured (*e.g.*, unbleached pulp, bleached pulp, finished paper products); and, to a large extent, untreated and treated wastewater characteristics (*e.g.*, BOD loadings, presence of toxic chlorinated compounds from pulp bleaching) and process water usage and discharge rates.'' [5] Each subcategory reflects differences in the pollutant discharges and treatment technologies associated with each process. Similarly, the ''Iron and Steel Manufacturing point source category'' (40 CFR part 420) consists of various subcategories that reflect the diverse range of processes involved in the manufacture of iron and steel, ranging from facilities that make the basic fuel used in the smelting of iron ore (subpart A—Cokemaking) to those that cast the molten steel into molds to form steel products (subpart F—Continuous Casting). An example of an industry category based on similarity of service provided is the Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), which is subcategorized based on the type of tank (*e.g.*, rail cars, trucks, barges) or cargo transported by the tanks cleaned by these facilities, reflecting variations in wastewaters and treatment technologies associated with each.

Thus, EPA's first decision criterion asks whether a new industrial operation or activity in question is properly characterized as an industry ''category'' based on similarity of product produced or service provided, or whether it simply represents a variation (*e.g.* new process) among facilities generating the same product and is therefore properly characterized as a potential new subcategory. If it is properly considered a stand-alone category in its own right, EPA addresses it pursuant to sections 304(m)(1)(B) and (C). If EPA determines that it is a potential new ''subcategory,'' EPA reviews the activity in its section 304(b) annual review of the existing categories in which it would belong, in order to determine whether it would be appropriate to revise the effluent guidelines for that category to include limits for the new subcategory.

As a practical matter, this approach makes sense. There are constantly new processes being developed within an industry category—new ways of making paper or steel, new ways of cleaning transportation equipment, new ways of extracting oil and gas, for example. These new processes are closely interwoven with the processes already covered by the existing effluent guidelines for the category—they often generate similar pollutants, are often performed by the same facilities, and their discharges can often be controlled by the same treatment technology. Therefore, it is more efficient for EPA to consider industry categories holistically by looking at these new processes when reviewing and revising the effluent guidelines for the existing category. The opposite approach could lead to a situation when EPA would do a separate effluent guidelines rulemaking every time a new individual process emerges without considering how these new technologies could affect BAT for related activities. In revising effluent guidelines, EPA often creates new subcategories to reflect new processes. For example, the effluent guidelines for the pesticides chemicals category (40 CFR part 455) did not originally cover refilling establishments because this process was developed after the limitations were first promulgated. When EPA revised the effluent guidelines for the Pesticides Chemicals category, EPA included refilling establishments as a new subcategory subject to the effluent limits for this category. The issue is not whether a guideline should be developed for a particular activity, but whether the analysis should occur in isolation or as part of a broader review.

To ensure appropriate regulation of such new subcategories prior to EPA's promulgation of new effluent guidelines for the industrial category to which they belong, under EPA's regulations at 40 CFR part 125.3(c), a permit writer is required to establish technology-based effluent limitations for these processes on a case by case, ''Best Professional Judgment'' (BPJ) basis, considering the same factors that EPA considers in promulgating categorical effluent limitations guidelines. These new processes are covered by these BPJ-based effluent guidelines until the effluent guidelines for the industrial category are revised to include limits for these new subcategories.

EPA's approach to addressing new industries is analogous to EPA's approach to addressing newly identified pollutants. When EPA identifies new pollutants associated with the discharge from existing categories, EPA considers limits for those new pollutants in the context of reviewing and revising the existing effluent guidelines for that category. For example, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp, Paper, and Paperboard point source category (40 CFR 430) to add BAT limitations for dioxin, which was not measurable when EPA first promulgated these effluent guidelines and pretreatment standards and was not addressed by the pollutant control technologies considered at that time. See 63 FR 18504 (April 15, 1998).

In short, for the reasons discussed above, EPA believes that the appropriateness of addressing a new process or pollutant discharge is best considered in the context of revising an existing set of effluent guidelines. Accordingly, EPA analyzed similar industrial activities not regulated by existing regulations as part of its annual review of existing effluent guidelines and pretreatment standards.

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories comprised exclusively or almost exclusively of indirect discharging facilities regulated under section 307. For example, based on its finding that the Health Services Industry consists almost exclusively of indirect dischargers, EPA did not identify this industry in the 2008 Plan but instead will consider whether to adopt pretreatment standards for this industry in the context of its section 304(g)/307(b) review of indirect dischargers. Similarly, EPA would not identify in the Plan categories for which effluent guidelines do not apply, *e.g.*,

[5] U.S. EPA, 1997. *Supplemental Technical Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard Category,* Page 5–3, EPA–821-R–97–011, October 1997.

POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, CWA section 304(m)(1)(B) applies only to industrial categories of sources that discharge toxic or non-conventional pollutants to waters of the United States. EPA therefore did not identify in the Plan industrial activities for which conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, section 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. EPA does not believe that it is necessary, nor was it Congressional intent, to develop national effluent guidelines for categories of sources that discharge trivial amounts of toxic or non-conventional pollutants and therefore pose an insignificant hazard to human health or the environment. See Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31 (*see* DCN 03911). This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard to human health or the environment associated with toxic or non-conventional pollutants.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those potential new categories for which an effluent guidelines rulemaking may be an appropriate tool. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges.

This interpretation is supported by the Supreme Court's decision in *Norton* v. *Southern Utah Wilderness Alliance et al.* (124 S. Ct. 2373, 2383 (2004)), which recognized the importance of agency discretion over its internal planning processes. Specifically, the Court in *Norton* held that a statute requiring an agency to ''manage wilderness study areas . . . in a manner so as not to impair the suitability of such areas'' was too broad to constrain the agency's discretion over its internal land use planning processes. *See also Fund for Animals et al.* v. *U.S. Bureau of Land Management*, No. 04–5359, 2006 U.S. App. LEXIS 21206 (D.C. Cir., August 18, 2006); *Center for Biological Diversity* v. *Veneman*, 394 F.3d 1108 (9th Cir. 2005) (both cases following *Norton* line of reasoning to find that statutory mandate was not sufficiently specific to constrain agency discretion over its internal planning processes). In this case, the statutory mandate at issue—establish technology-based effluent limits that take into account a range of factors including ''such other factors as the Administrator deems appropriate''—also lacks the specificity to constrain the Agency's discretion over its effluent guidelines planning process. See CWA section 304(b)(2)(B). This broad statutory mandate gives EPA the discretion to identify in its section 304(m) Plan only those industrial categories for which it determines that effluent guidelines would be ''appropriate'' and to rely on other CWA tools—such as site-specific technology based limitations developed by permit writers on a BPJ basis—when it determines that such tools would be a more effective and efficient way of increasing the stringency of pollution control through NPDES permits.

Congress specifically accorded EPA with the discretion to choose the appropriate tool for pressing the development of new technologies, authorizing EPA to develop technology-based effluent limitations using a site-specific BPJ approach under CWA section 402(a)(1), rather than pursuant to an effluent guidelines rulemaking. See CWA section 301(b)(3)(B). Significantly, section 301(b)(3)(B) was enacted contemporaneously with section 304(m) and its planning process, suggesting that Congress contemplated the use of *both* tools, with the choice of tools in any given 304(m) plan left to the Administrator's discretion. The Clean Water Act requirement that EPA develop an effluent guidelines plan—when coupled with the broad statutory mandate to consider ''appropriate'' factors in establishing technology-based effluent limitations and the direction to establish such limitations either through effluent guidelines or site-specific BAT decision-making—cannot be read to constrain the Agency's discretion over what it includes in its plan.

Moreover, because section 304(m)(1)(C) requires EPA to complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) Plan,[6] EPA believes that Congress intended to give EPA the discretion under section 304(m)(1)(B) to prioritize its identification of potential new industrial categories so that it can use available resources effectively. Otherwise, EPA might find itself conducting rushed, resource-intensive effluent guidelines rulemakings where none is actually needed for the protection of human health and the environment, or where such protection could be more effectively achieved through other CWA mechanisms. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner, consistent with Agency priorities and the funds appropriated by Congress to execute them. By crafting section 304(m) as a planning mechanism, Congress has given EPA that discretion.

Like the land use plan at issue in *Norton*, EPA's plan is ultimately ''a statement of choices and priorities.'' *See Norton* v. *Southern Utah Wilderness Alliance, et al.*, 124 S. Ct. 2373, 2383 (2004). By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. EPA has given careful consideration and summarized its findings with respect to all industries suggested by commenters as candidates for inclusion in the Plan. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution.

[6] EPA recognizes that a recent district court held that section 304(m)(1)(c) requires EPA to promulgate effluent guidelines within three years for new categories identified in the Plan—not simply to conclude rulemaking in three years. *See NRDC et al.* v. *EPA*, 437 F.Supp.2d 1137 (C.D. Ca., 2006). EPA disagrees with this interpretation and has appealed this decision. If upheld on appeal, this decision would limit EPA's discretion regarding whether or not to promulgate effluent guidelines for new categories identified in the Plan. However, it would not affect EPA's discretion under section 304(m)(1)(B) to identify new industries in the Plan in the first place.

IX. Request for Comment and Information

A. EPA Requests Information on the Steam Electric Power Generating Category (Part 423)

EPA solicits public comments on the following areas of interest to support the Steam Electric Power Generating Detailed Study.

• *Integrated gasification combined cycle (IGCC) facilities.* EPA solicits comment on the wastewaters that may be generated or otherwise affected by the coal gasification process. What are the sources and characteristics of wastewaters generated by coal gasification and related processes at IGCC plants? How do these wastewaters compare to those of traditional coal-fired steam electric processes?

• *Treatment technologies for wastewaters from wet FGD systems.* EPA solicits information and data regarding the costs and effectiveness of available wastewater treatment technologies (*e.g.*, chemical precipitation) for wastewater from wet FGD systems (*e.g.*, capital and annual costs, pollutant removals). To help evaluate efficacy of the treatment technologies, EPA seeks both influent and effluent data from full scale or pilot applications. Data submitted should include details on the date samples were collected and analyzed, laboratory analytical methods used, and a description of the wastewater treatment system and sample collection points.

• *Ash pond management.* EPA solicits information that would help identify best management practices for ash ponds. For example, EPA is aware of information suggesting that managing pyritic wastes in ash ponds should be avoided because it can contribute to lowering pH of the ash pond impoundment, potentially liberating metals in ash sediments and elevating the level of metals released to surface waters. In addition, introducing certain other wastes such as coal pile runoff can substantially affect ash pond pH, similarly producing conditions that favor releasing metals present in ash pond sediments and suspended particulates. EPA solicits information on best management practices for minimizing the potential for such wastes to adversely impact ash pond operation and discharges.

• *Environmental assessments/impacts.* EPA solicits information on environmental assessments that have been conducted for discharges from steam electric power plants. In particular, EPA seeks information linking the environmental assessments to discharges of metals (*e.g.*, mercury, arsenic, selenium, boron, and magnesium), ammonia and other nitrogen compounds, phosphorus, or biocide residuals (*e.g.*, chlorinated or brominated compounds, or non-oxidizing chemical biocides). EPA also seeks more general information regarding the potential environmental hazard associated with discharges of these pollutants from steam electric power plants.

B. EPA Requests Information on the Coal Mining Category (Part 434)

EPA would appreciate any information to help address the following questions.

• To what degree are manganese discharges from coal mines causing environmental impairment? How would impacts change if the manganese limits were removed or made less stringent?

• How many companies have defaulted on their bonds because of post-mining manganese treatment costs?

• What is the potential for companies to default on their bonds in the future if the current manganese limit remains unchanged?

• To what extent have states had to assume long-term water treatment responsibilities for mines where the bonds have been forfeited? How are states managing these responsibilities?

• What is the prevalence of metals other than manganese, and other contaminants such as sulfates and chloride, in untreated mining wastewater? To what extent are other metals and contaminants removed by current manganese treatment practices? How significant are the impacts from other metals and contaminants?

• How successful are trust funds as alternatives to bonds for long-term manganese control from post-mining sites?

• To what extent are water discharge permits for post-mining operations based on state water quality standards rather than on EPA effluent limitations and guidelines?

C. EPA Requests Information on the Coalbed Methane Sector of the Oil and Gas Extraction Category (Part 435)

EPA is researching the following questions and topics as they relate to the quantity and toxicity of pollutants discharged and the environmental impacts of these discharges to support the Oil and Gas Extraction/Coal Bed Methane detailed study.

• What pollutants are typically discharged in CBM produced water?

• What is the toxicity of these pollutants to human health and the environment?

• What is the range of pollutant concentrations and CBM produced water flow rate?

• What CBM produced water pollutants are typically controlled through permit limits and what is the range of these permit limits?

• What are the observed and potential impacts of CBM produced water discharges on aquatic environments and communities, riparian zones, and other wetlands?

• How does the composition of CBM produced water change when discharged to normally dry draws or ephemeral streams?

• What is the potential for CBM produced water discharges to mobilize metals, soil nutrients, pesticides and other organic contaminants to surface waters?

• What CBM produced water pollutants are typically controlled through permit limits and what is the range of effluent limits?

• What are measures that can mitigate potential impacts to uses of surface waters for irrigation?

EPA is researching the following questions and topics as they relate to the potential technology options and beneficial use practices for this industrial sector.

• What are the current industry treatment technologies and beneficial use practices for CBM produced water?

• What are the potential beneficial use applications of CBM produced water and what are the corresponding criteria for such uses?

• What are the performances of these treatment technologies and beneficial use practices for reducing the potential impacts of CBM produced water discharges?

• What is the range of incremental annualized compliance costs associated with these technologies and practices? How do these costs differ between existing and new sources?

• What is the demonstrated use and economic affordability (*e.g.*, production losses, firm failures, employment impacts resulting from production losses and firm failures, impacts on small businesses) of these technologies across the different CBM basins?

• What are the types of non-water quality environmental impacts (including energy impacts) associated with the current industry treatment technologies and beneficial use practices for CBM produced water?

EPA is researching the following questions and topics as they relate to the expansion of CBM exploration and development and the affordability of potential technology options for this industrial sector.

• What is the near-term and long-term growth rate for this industry sector? Which CBM basins are likely to experience the most growth within the next ten years?

• What are the current industry drilling and infrastructure expansion plans for CBM exploration and development?

• What is the predicted range of CBM reserves across the different basins for different natural gas prices?

• What are the potential impacts on developing CBM reserves and operator profitability and rates of return on investment in response to any increased costs associated with potential industry treatment technologies and beneficial use practices for CBM produced water discharges?

• What is the difference between potential impacts on existing sources versus new sources?

• What percentage of CBM operators are considered small entities?

EPA is researching the following questions and topics as they relate to current regulatory controls.

• How do NPDES permit programs regulate CBM produced water discharges (*e.g.*, individual permits, general permits)?

• What is the BPJ basis for existing technology-based effluent limits for CBM produced water discharges?

• To what extent and how do current regulatory controls ensure the beneficial use of CBM produced water?

What other statutes might affect the ability to discharge, treat, or beneficially use CBM produced water (*e.g.*, SDWA, RCRA)?

D. EPA Requests Comments and Information on the Following as It Relates to Its Health Services Study

1. Dental Mercury

• In state and localities that have not established dental mercury guidance or requirements, what, if anything, do dental offices currently do to reduce mercury discharges associated with dental amalgam? Also, what annual costs are associated with these activities?

• EPA assumes that, at a minimum, all dental facilities have chairside traps and/or vacuum pump filters, and that they dispose of amalgam collected in these traps/filters as solid waste (*i.e.*, not subsequently rinsed down the drain). EPA solicits comment on this assumption.

• To what extent are the ADA recommended BMPs currently utilized in the dental industry? What is the effectiveness in reducing dental mercury associated with these BMPs and what are the annual costs?

• EPA solicits data on the effectiveness of BMP or amalgam separators in reducing mercury in POTW influent, effluent, and/or sludge. EPA is particularly interested in obtaining data from studies that measured mercury concentrations in POTW influent, effluent, and/or sludge before and after BMP or amalgam separation implementation.

• EPA solicits information on the cost and burden to POTWs of implementing state or local BMP or amalgam separator requirements. EPA is also interested in obtaining information on how POTWs have implemented such standards.

• EPA solicits comment on any known interference or pass through problems associated with dental mercury discharges.

• EPA solicits additional information on the effectiveness of voluntary local programs for reducing mercury discharges from dental facilities.

2. Unused Pharmaceuticals

• EPA solicits identification of any policies, procedures or guidelines that govern the disposal of unused pharmaceuticals from hospitals; offices of doctors and mental health practitioners; nursing, long-term care, re-habilitation, and personal care facilities; medical laboratories and diagnostic service facilities; and veterinary care facilities.

• EPA solicits information on the most likely sub-sectors within the Health Service sector that would accumulate unused pharmaceuticals for management and disposal.

• When applicable, to what extent are unused pharmaceuticals disposed according to the Resource Conservation and Recovery Act (RCRA)?

• EPA solicits comment and data on: (1) The main factors that drive current disposal practices; and (2) any barriers preventing the reduction or elimination of unused pharmaceuticals to POTWs and/or surface waters. In particular, EPA solicits comment on the extent that the Controlled Substances Act (21 U.S.C. 801 et. seq.) complicates the design of an efficacious solution to drug disposal?

• EPA solicits quantitative information or tracking sheets for the past year on the disposal of unused pharmaceuticals via the toilet, drain, or sewer.

• EPA solicits data on how control authorities are currently controlling disposal of unused pharmaceuticals via wastewater.

• EPA solicits information on any technologies or BMPs that are available to control or eliminate the disposal of unused pharmaceuticals to POTWs.

• EPA solicits qualitative and quantitative data on the effectiveness and annualized costs of the technologies or BMPs that health service facilities use to control or eliminate the discharge of unused pharmaceuticals from their wastewater. EPA is also interested in obtaining information on the current costs (including labor) associated with disposal of unused pharmaceuticals via the drain or toilet.

• EPA solicits any studies or information on the potential for unused pharmaceuticals disposed in non-hazardous landfills to contaminate underground resources of drinking water.

E. Preliminary Category Reviews for the 2008 Annual Review

EPA requests information on the industries for which it is continuing or initiating preliminary category reviews: Ore Mining and Dressing, Centralized Waste Treatment, and Waste Combustors (*i.e.*, industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1 in section V.B.4 of today's notice). EPA will need to collect more information for the 2008 annual review. Specifically, EPA hopes to gather the following information:

• What toxic pollutants are discharged from these industries in non-trivial amounts on an industry and per-facility basis?

• What raw material(s) or process(es) are the sources of these pollutants?

• What technologies or management practices are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

F. Data Sources and Methodologies

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this preliminary Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket for a more detailed discussion of EPA's analysis supporting the reviews in this notice (*see* DCN 04247).

G. BPJ Permit-Based Support

EPA solicits comments on whether and if so how, the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard is associated with one or a few facilities). EPA solicits comment on categories for which the

Agency should provide permit-based support.

H. Identification of New Industrial Categories and Sectors

EPA solicits comment on the methodology for grouping industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization, and the factors and measures EPA should consider for determining whether to identify such industries for a rulemaking. EPA solicits comment on other data sources and approaches EPA can use to identify industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization.

I. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards.

Notice of Availability of Preliminary 2008 Effluent Guidelines Program Plan

J. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (*e.g.*, wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries without pretreatment standards. EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

Dated: October 18, 2007.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E7–21310 Filed 10–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8488–8]

Clean Water Act Section 303(d): Availability of 20 Total Maximum Daily Loads (TMDL) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record files for 20 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Red and the Terrebonne Basins of Louisiana, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before November 29, 2007.

ADDRESSES: Comments on the 20 TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record files for the 20 TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes 15 of these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on 20 TMDLs

By this notice EPA is seeking comment on the following 20 TMDLs for waters located within Louisiana basins:

Subsegment	Waterbody name	Pollutant
100404	Cypress Bayou Reservoir	Dissolved Oxygen.
100405	Black Bayou (including Black Bayou Reservoir)	Dissolved Oxygen.
120202	Bayou Black—Intracoastal Waterway to Houma	Nutrients and Dissolved Oxygen.
120204	Lake Verret and Grassy Lake	Nutrients and Dissolved Oxygen.
120304	Intracoastal Waterway—Houma to Larose	Nutrients and Dissolved Oxygen.
120401	Bayou Penchant—Bayou Chene to Lake Penchant	Dissolved Oxygen.
120403	Intracoastal Waterway—Bayou Boeuf Lake Penchant	Dissolved Oxygen.
120404		Dissolved Oxygen.
120405	Lake Hache, Lake Theriot	Nutrients and Dissolved Oxygen.
120406	Lake de Cade	Nutrients and Dissolved Oxygen.
120604	Bayou Blue—Intracoastal Waterway to boundary between segments 1206 and 1207.	Dissolved Oxygen.
120708	Lost Lake, Four League Bay	Nutrients and Dissolved Oxygen.
120709	Bayou Petite Cailou—From Houma Navigation Canal to Terrebonne Bay.	Nutrients and Dissolved Oxygen.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for the 20 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: October 23, 2007.

James R. Brown,

Chief, Planning and Analysis Branch, EPA Region 6.

[FR Doc. E7–21322 Filed 10–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 22, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information 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 PRA comments should be submitted on or before December 31, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License, FCC Form 302–TV; Application for DTV Broadcast Station License, FCC Form 302–DTV; Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Forms 302–TV, 302–DTV, 340 and 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 4,625.

Estimated Time per Response: 1–4 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 13,050 hours.

Total Annual Costs: $21,835,025.

Nature of Response: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The FCC is proposing rules that will permit AM radio stations to use FM translator stations under certain circumstances. Therefore, AM radio stations will use FCC Form 349 to apply for authorizations to operate such FM translator stations. The Commission proposes to revise the FCC Form 349 to reflect the revised purpose and eligibility changes in the rules applicable to FM translator stations.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR 73.3580. Section 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of these stations.

FCC Form 302–DTV is used by licensees and permittees of Digital TV (''DTV'') broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

FCC Form 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational (''NCE'') FM, TV, and DTV broadcast station, or to make changes in the existing facilities of such a station. The FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for noncommercial educational use, or in the situation where applications for NCE stations on non-reserved channels are mutually exclusive only with one another.

The Commission is only proposing to revise FCC Form 349 in this information collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–21339 Filed 10–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 19, 2007.

TIME AND DATE: 10 a.m., Thursday, November 1, 2007.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Emerald Coal Resources, LP*, Docket No. PENN 2007–251–E, and *Secretary of Labor* v. *Cumberland Coal*

Resources, LP, Docket No. PENN 2007–252–E. (Issues include whether the Administrative Law Judge erred in upholding the Secretary's decision to require that the operators' Emergency Response Plans (ERPs) contain provisions mandating that the operators provide purchase orders for rescue chambers.)

The Commission heard oral argument in these matters on October 23, 2007.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 07–5410 Filed 10–26–07; 1:33 pm]

BILLING CODE 6735–01–M

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 November 26, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. 1st United Bancorp, Boca Raton, Florida; to merge with Equitable Financial Group, Inc., and thereby indirectly acquire Equitable Bank, both of Ft. Lauderdale, Florida.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Midwest Bancorporation, Inc. and Affiliates Employee Stock Ownership Plan, Poplar Bluff, Missouri; to acquire additional shares, for total ownership of up to 45 percent, of Midwest Bancorporation, Inc., Poplar Bluff, Missouri, and thereby indirectly acquire First Midwest Bank of Dexter, Dexter, Missouri, and First Midwest Bank of the Ozarks, Piedmont, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Caldwell Holding Company, Columbia, Louisiana; to acquire 100 percent of the voting shares of Citizens Progressive Bank, Columbia, Louisiana.

Board of Governors of the Federal Reserve System, October 25, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–21302 Filed 10–29–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice anounces the 20th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: November 29, 2007, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090, Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/chroniccare/.*

SUPPLEMENTARY INFORMATION: The workgroup will hear testimony on ways to use information technology to better coordinate care for patients with chronic conditions and will discuss this information in light of opportunities to better facilitate patient care coordination. The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–5378 Filed 10–29–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007F–0368]

Biomin GmbH; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Biomin GmbH, Industriestrasse 21, Herzogenburg, Austria 3130, has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *Eubacterium* bacterial species in feed for detoxifying trichothecene mycotoxins in the digestive tracts of swine and poultry.

DATES: Submit written or electronic comments on the petitioner's environmental assessment December 31, 2007.

ADDRESSES: You may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, email: *isabel.pocurull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP No. 2256) has been filed by Betty J. Pendleton, 768 Arbor Court, Mobile, Alabama 36609, US agent for Biomin GmbH, Industriestrasse 21, Herzogenburg, Austria 3130. The petition proposes to amend the food additive regulations in part 573, Food Additives Permitted in Feed and Drinking Water of Animals (21 CFR part 573) to provide for the safe use of *Eubacterium* bacterial species in feed for detoxifying trichothecene mycotoxins in the digestive tracts of swine and poultry.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: October 18, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–21298 Filed 10–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0395]

Draft Guidance for Industry on Acute Bacterial Sinusitis: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Acute Bacterial Sinusitis: Developing Drugs for Treatment.'' The purpose of this guidance is to assist clinical trial sponsors and investigators in the development of antimicrobial drug products for the treatment of acute bacterial sinusitis (ABS). The agency's thinking in this area has evolved in recent years, and this draft guidance, when finalized, will inform sponsors of our current thinking in this area. In addition, it will fulfill a statutory requirement to publish such a guidance enacted in the Food and Drug Administration Amendments Act of 2007 (FDAAA).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 28, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Steve Gitterman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6134, Silver Spring, MD 20993–0002, 301–796–1600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Acute Bacterial Sinusitis: Developing Drugs for Treatment.'' The purpose of this guidance is to assist clinical trial sponsors and investigators in the development of antimicrobial drug products for the treatment of ABS. This guidance revises the draft guidance regarding ABS published in 1998. Section 911 of the FDAAA (Public Law 110–85) adds section 511 to the Federal Food, Drug, and Cosmetic Act that directs the Secretary for Health and Human Services to ''issue guidance for the conduct of clinical trials with respect to antibiotic drugs, including antimicrobials to treat acute bacterial sinusitis.'' This guidance will fulfill this statutory requirement.

The design of clinical trials for ABS was the subject of an Anti-Infective Drug Products Advisory Committee meeting on October 28, 2003. In addition, other advisory committee meetings have focused on the development of specific drug products for this indication. As a result of these public discussions, as well as review of pending applications at FDA, the agency's thinking in this area has evolved in recent years, and this guidance informs sponsors of the changes in our recommendations. Specifically, this guidance recommends that ABS clinical trials be designed as superiority rather than noninferiority trials, and discusses some possible study designs that might be employed in an ABS trial designed to show superiority. This guidance also recommends that microbiological information be obtained in at least one of the controlled studies. This guidance discusses patient-reported outcome instruments for assessing clinical response, and the use of time to resolution as a possible approach to assessing the primary endpoint. As required by FDAAA, this guidance also addresses the use of animal models and surrogate markers in the development of drugs for the treatment of ABS.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on developing drugs for the treatment of acute bacterial sinusitis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach

satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information referred to in the guidance entitled ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under OMB control number 0910–0581.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–21332 Filed 10–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974: New System of Records

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notification of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Health Resources and Services Administration (HRSA) is publishing a notice of a proposal to add a new system of records. The Campus Based Branch (CBB) of the Division of Health Careers Diversity and Development in the Bureau of Health Professions is currently utilizing a document management system (DMS) that dynamically manages its flow of documents produced and received. the DMS is an intra-office system in which documents contained within the system are only shared among CBB staff. The DMS contains names and other personally identifiable information of borrowers.

DATES: HRSA invites interested parties to submit comments on the proposed New System of Records on or before December 10, 2007. HRSA has sent a report of a New System of Records to Congress and to the Office of Management and Budget (OMB) on October 18, 2007. The New System of Records will be effective 40 days from the date submitted to OMB unless HRSA comments which would result in a contrary determination.

ADDRESSES: Please address comments to Donn Taylor, Health Resources and Services Administration, Privacy Act Coordinator, 5600 Fishers Lane, Room 14A–20, Rockville, Maryland 20857; Telephone (301) 443–0204. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday. this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Henry Lopez, Director, division of Health Careers diversity and Development, Bureau of Health Professions, 5600 Fisher Lane, Room 8-42, Rockville, Maryland 20857; Telephone 301–443–1173. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration proposes to establish a New System of Records: ''Campus Based Branch Programs Document Management System, HHS/HRSA/BHPr.'' The CBB programs which use the DMS are authorized by the following sections of the Public Health Service Act: Section 721 of the Public Health Service Act (42 U.S.C. 292q) the Health Professions Student Loan Program; Section 724 of the Public Health Service Act (42 U.S.C. 292s) the Primary Care Loan Program; Section 724 of the Public Health Service Act (42 U.S.C. 292t) the Loans for Disadvantaged Students Program; Section 835 of the Public Health Service Act (42 U.S. C. 297a) the Nursing Student Loan Program; and Section 737 of the Public Health Service Act (42 U.S.C. 293a) the Scholarships for Disadvantaged Students Program. In accordance with their applicable regulations, the funds appropriated or distributed from these CBB programs are monitored by the CBB. The DMS is an automated system that enables CBB to fulfill its duty in monitoring these programs. The DMS contains annual operating and performance data from educational institutions participating in CBB programs, as well as personally identifiable information of borrowers.

Dated: October 12, 2007.

Elizabeth M. Duke,

Administrator.

Report of a New System of Records 09–15–0069

SYSTEM NAME:

Campus Based Branch (CBB) Program Document Management System (DMS), HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

The Division of Health Careers Diversity and Development (DHCDD) of the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS). Records are located at 5600 Fishers Lane, Room 8–42, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Student and faculty borrowers who participate/participated in CBB loan and scholarship programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The systems include materials such as:

1. Names, addresses, phone numbers, medical records, financial information, and social security numbers of borrowers.
2. Annual Operating Reports that contain financial information from institutions, including aggregate amounts of loans disbursed, collected and retired.
3. Performance reports on the aggregate number of borrowers, their classification in race/ethnicity categories, and whether they are practicing in primary care.
4. Contact information of financial aid officers that include name, title, school address and direct phone number.
5. Correspondence from the financial aid officers regarding issues with specific borrowers. The majority of these correspondence only indicate the borrower's name and/or amount borrowed.

6. Correspondence from borrowers on specific issues on CBB programs or the school that administers the programs. These correspondences may include the borrower's name, address and phone number.

7. Case reports from educational institutions on borrowers whom the school is claiming an uncollectible debt or a total disability write-off. The documents contained in these case reports may include name, address, financial income information, medical records and social security numbers.

8. Any other correspondence or documentation related to general or specific issues regarding CBB programs at institutions or borrowers who participate in CBB programs.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Section 721 of the Public Health Service Act (42 U.S.C. 292q), Health Professions Student Loan; Section 835 of the Public Health Service Act (42 U.S.C. 297a), Nursing Student Loan; Section 723 of the Public Health Service Act (42 U.S.C. 292s), Primary Care Loan; Section 724 of the Public Health Service Act (42 U.S.C. 292t), Loans for Disadvantaged Students; Section 737 of the Public Health Service Act (42 U.S.C. 293a), Scholarships for Disadvantaged Students.

PURPOSE(S):

The purpose of the DMS system is to support the CBB in monitoring its programs, in order to ensure the efficiency of the factual information in reports and documents, and to archive the documents for efficient access and verification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system above, disclosure of which is governed by the System of Records Notice for the ''Campus Based Branch Program Document Management System, HHS/HRSA/BHPr'' may be disclosed to others:

1. HRSA may disclose records to Department contractors and subcontractors for the purpose of assisting CBB in reviewing cases and maintaining systems, including conducting data analysis for program evaluations, compiling managerial and statistical reports, and record systems processing and refinement. Contractors will maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

2. Disclosure may be made to a Congressional office from the record of an individual or institutional participant, in response to any inquiry from the Congressional office made at the request of that individual.

3. Disclosure may be made to the Department of Justice, or to a court or other tribunal, from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in such case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

5. HRSA may disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, to the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of collecting a debt. This address may be disclosed by HRSA to any school from which the defaulted borrower received the student loan, for use only by officers, employees, or agents of the school whose duties relate to the collection of health professions or nursing student loan funds, to locate the defaulted borrower to collect the loan. Any school which requests and obtains this address information must comply with the requirements of HRSA and the IRS regarding the safeguarding and proper handling of this information.

STORAGE:

Records are maintained in the DMS or in file folders and/or computer data files.

RETRIEVABILITY:

Retrieval of data and case files is by subject's name or institution ID.

SAFEGUARDS:

1. Authorized users: Access is limited to authorized HHS staff in performance of their duties. Authorized personnel include the contractor/system manager and his staff who have responsibilities for administering the programs. HRSA maintains current lists of authorized users. Educational institutions may request or access information they submitted to CBB. However, they do not have access to information submitted by other institutions.

2. Physical safeguards: The DMS is housed on a HRSA server behind a firewall. The DMS is an intra-office system only for the sole use of CBB staff. All computer equipment and files and hard copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, on-site guard force, random guard patrol, key/passcard/combination controls, and receptionist controlled area. Hard copy files are maintained in a file room used solely for this purpose with access limited by combination lock to authorized users identified above. Computer files are password protected and are accessible only by use of computers which are password protected.

3. Procedural safeguards: A password is required to access computer files. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and ADP security procedures. The safeguards described above were established in accordance with DHHS chapter 45–13 and supplementary chapter PHS hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, ''ADP Systems Security.''

RETENTION AND DISPOSAL:

Records in the DMS are retained for at least 6 years after full payment of the loan, completion of service obligation, or repayment to the Secretary in the case of a default. Contact the System Manager at the following address for further information.

SYSTEM MANAGERS(S) AND ADDRESS:

Director, Division of Health Careers Diversity and Development, Bureau of Health Professions, Health Resources and Services Administration, Department of Health and Human Services, 5600 Fishers Lane, Room 8–42, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests concerning whether the system contains records about you should be made to the Systems Manager.

REQUESTS IN PERSON:

A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, Social Security number and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the records. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine.

REQUESTS BY TELEPHONE:

Because positive identification of the caller cannot be established, no requests by telephone will be honored.

REQUESTS BY MAIL:

A written request must contain the name and address of the requester, Social Security number or other identifying numbers, and his/her signature which is either notarized to verify his/her identify or includes a written certification that the reqeuster is a person he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that may have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Any record subject may contest the accuracy of information on file at CBB by writing to the Director, Division of Health Careers Diversity and Development, Bureau of Health Professions, Health Resources and Services Administration, Department of Health and Human Services, 5600 Fishers Lane, Room 8–42, Rockville, Maryland 20857. The request should contain a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

1. Educational institutions participating in CBB programs
2. Financial aid officers administering CBB programs
3. Student borrowers and recipients participating in CBB programs
4. Borrowers submitted for uncollectible debt write-offs
5. Borrowers submitted for total disability write-offs

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 07–5379 Filed 10–29–07; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Proposed Eligibility Guidelines and Publication of Final Program Eligibility Guidelines

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of Web site.

SUMMARY: The Health Resources and Services Administration published a notice in the **Federal Register** of October 5, 2007 (FR Doc. E7–19747), on pages 57049–57052, regarding response to solicitation of comments and publication of final program eligibility guidelines.

Correction

In the **Federal Register** issue of October 5 (FR Doc. E7–19747), on page 57050, second column, under section V. Response to Comment that Overall Reimbursement Level Should Exceed $6,000, Conclusion, correct the Web site to read: *http://www.livingdonorassistance.org.*

Dated: October 23, 2007.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. E7–21309 Filed 10–29–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Participant Feedback on Training Under the Cooperative Agreement for Mental Health Care Provider Education in HIV/AIDS Program (OMB No. 0930–0195)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) intends to continue to conduct a multi-site assessment for the Mental Health Care Provider Education in HIV/AIDS Program. The education programs funded under this cooperative agreement are designed to disseminate knowledge of the psychological and neuropsychiatric sequelae of HIV/AIDS to both traditional (e.g., psychiatrists, psychologists, nurses, primary care physicians, medical students, and social workers) and non-traditional (e.g., clergy, and alternative health care workers) first-line providers of mental health services, in particular to providers in minority communities.

The multi-site assessment is designed to assess the effectiveness of particular

training curricula, document the integrity of training delivery formats, and assess the effectiveness of the various training delivery formats. Analyses will assist CMHS in documenting the numbers and types of traditional and non-traditional mental health providers accessing training; the content, nature and types of training participants receive; and the extent to which trainees experience knowledge, skill and attitude gains/changes as a result of training attendance. The multi-site data collection design uses a two-tiered data collection and analytic strategy to collect information on (1) the organization and delivery of training, and (2) the impact of training on participants' knowledge, skills and abilities.

Information about the organization and delivery of training will be collected from trainers and staff who are funded by these cooperative agreements/contracts, hence there is no respondent burden. All training participants will be asked to complete a brief feedback form at the end of the training session. CMHS anticipates funding 10 education sites for the Mental Health Care Provider Education in HIV/AIDS Program. The annual burden estimates for this activity are shown below:

Form	Responses per respondent	Estimated number of respondents (× 10 sites)	Hours per response	Total hours
Session Report Form	1	60 × 10 = 600	0.080	48
Participant Feedback Form (General Education)	1	500 × 10 = 5000	0.167	835
Neuropsychiatric Participant Feedback Form	1	160 × 10 = 1600	0.167	267
Non Physician Neuropsychiatric Participant Feedback Form	1	240 × 10 = 2400	0.167	401
Adherence Participant Feedback Form	1	100 × 10 = 1000	0.167	167
Ethics Participant Feedback Form	1	200 × 10 = 2000	0.167	125
Total		12,600		1,843

Written comments and recommendations concerning the proposed information collection should be sent by November 29, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: October 24, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. 07–5376 Filed 10–29–07; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. CGD08–07–029]

Lower Mississippi River Waterways Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Lower Mississippi River Waterway Safety Advisory Committee. The Lower Mississippi River Waterway Safety Advisory Committee advises and makes recommendations to the Coast Guard on matters relating to navigation safety on the Lower Mississippi River.

DATES: Application forms should reach us on or before December 14, 2007.

ADDRESSES: You may request an application form by writing U.S. Coast Guard, Sector New Orleans, *Attn:* Waterways Management, 1615 Poydras Street, New Orleans, LA 70112–2711 or by calling 504–565–5108. Send your application in written form to the above street address. A copy of this notice and the application form are available in our online docket, CGD08–07–029, at *http://regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LTJG Tonya Harrington, Assistant to Executive Director of Lower Mississippi River Waterway Safety Advisory Committee at 504–565–5108.

SUPPLEMENTARY INFORMATION: The Lower Mississippi River Waterway Safety Advisory Committee (''Committee'') is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). This committee provides local expertise on communication, surveillance, traffic control, anchorages, aids to navigation and other topics relating to navigational safety on the Lower Mississippi River to the Coast Guard.

The Committee meets at least four times a year in the New Orleans area. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for twenty four positions that expire or become vacant on May 30, 2008. To be eligible you should have expertise in navigation safety, waterways management, vessel traffic service and management, shipboard operations or facility operations. Each member serves for a term of 2 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

Vacancies to be filled are for:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations that operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area coved by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels that utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on vessels which utilize the navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: October 18, 2007.

J.H. Horn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E7–21304 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. CGD08–07–030]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, December 11, 2007, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before November 27, 2007. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before November 27, 2007.

ADDRESSES: The meeting will be held at the New Orleans Yacht Club, 403 North Roadway, West End, New Orleans, LA 70124. This notice is available in our online docket, CGD08–07–030 at *http://regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Tonya Harrington, Assistant Committee Administrator, e-mail *tonya.m.harrington@uscg.mil* or LTJG Tom Sanborn @ *tom.a.sanborn@uscg.mil.* Written materials and requests to make presentations should be mailed to Commanding Officer, USCG Sector New Orleans, *Attn:* Waterways Management, 1615 Poydras St., New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the LMRWSAC meeting is as follows:

(1) Introduction of committee members.

(2) Opening Remarks.

(3) Approval of the August 28, 2007 minutes.

(4) Old Business:

(a) Captain of the Port status report.

(b) VTS update report.

(c) Subcommittee / Working Groups update reports.

(5) New Business.

(6) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than November 27, 2007. Written material for distribution at the meeting should reach the Coast Guard no later than November 27, 2007. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than November 27, 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 meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: October 18, 2007.

J.H. Horn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E7–21305 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; Africa Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: You must submit comments on or before December 31, 2007.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Division of International Conservation awards grants funded under the:

(1) African Elephant Conservation Act (16 U.S.C. 4201–4245).

(2) Asian Elephant Conservation Act of 1997 (16 U.S.C. 4261).

(3) Great Apes Conservation Act of 2000 (Pub. L. 106–411).

(4) Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5306).

(5) Marine Turtle Conservation Act (Pub. L. 108–266).

(6) Wildlife Without Borders Programs - Mexico, Latin America and the Caribbean, and Russia.

OMB has approved the information collection associated with the above grants and assigned control number 1018–0123. We plan to ask OMB to approve our proposed information collection associated with the Africa Grant Program, which will be our newest area of focus under the Wildlife Without Borders programs.

Africa's magnificent wildlife resources are under increasing pressure from human activities. The proposed Africa grant initiative aims to provide training opportunities for African conservationists, educators, and policymakers to strengthen wildlife management in and around protected areas. For the purpose of this fund, protected areas are defined as sites that are publicly or privately owned with recognized legal status accorded by national, provincial, or local government, containing primarily unmodified natural systems managed for long-term protection. Examples include: national parks, forest reserves, buffer zones, community reserves, and privately held land conservancies. Of particular interest are projects that provide training to:

(1) Raise capacity in and around protected areas to mitigate the impact of extractive industries, climate change, human /wildlife conflict, illegal trade in bushmeat, and/or wildlife disease.

(2) Strengthen the administrative capacity (human resource management, financial management, vehicle and facility maintenance, grant writing and project implementation, community outreach and education, conflict resolution, and coalition building) of protected areas.

(3) Strengthen university, college, and other conservation training programs that address protected area management.

(4) Strengthen decisionmakers' knowledge of concepts relevant to protected area legislation, policy, and finance and the importance of harmonizing these with other national sectoral policies.

By providing wildlife professionals with opportunities for training, we can help empower a generation of local people to address key conservation issues such as the threat to wildlife from extractive industries, illegal hunting, human/wildlife conflict, and wildlife disease.

Applicants submit proposals for funding in response to Notices of Funding Availability that we will publish on Grants.gov. We plan to collect the following information:

(1) Cover page with basic project details (FWS Form 3–2338).

(2) Project summary and narrative.

(3) Letter of appropriate government endorsement.

(4) Brief curricula vitae for key project personnel.

(5) Complete Standard Forms 424 and 424b (nondomestic applicants do not submit the standard forms).

Proposals may also include, as appropriate, a copy of the organization's Negotiated Indirect Cost Rate Agreement (NIRCA) and any additional documentation supporting the proposed project.

The project summary and narrative are the basis for this information collection request for approval. A panel of technical experts reviews each proposal to assess how well the project addresses the priorities identified by each program's authorizing legislation. As all of the on-the-ground projects funded by this program will be conducted outside the United States, the letter of appropriate government endorsement ensures that the proposed activities will not meet with local resistance or work in opposition to locally identified priorities and needs. Brief curricula vitae for key project personnel allow the review panel to assess the qualifications of project staff to effectively carry out the project goals and objectives. As all Federal entities must honor the indirect cost rates an organization has negotiated with its cognizant agency, we require all organizations with a NICRA to submit the agreement paperwork with their proposals to verify how their rate is applied in their proposed budget. Applicants may provide any additional documentation that they believe best supports their proposal.

II. Data

OMB Control Number: None. This is a new collection.

Title: Africa Grant Program.

Service Form Number(s): 3–2338.

Type of Request: New collection.

Affected Public: Domestic and nondomestic Federal, State, and local governments, nonprofit, nongovernmental organizations; public and private institutions of higher education; and any other organization or individual with demonstrated experience deemed necessary to carry out the proposed project.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3–2338 (cover page)	50	50	1 hour	50
Application narrative	50	50	11 hours	550
Report (mid-term and final)	10	20	30 hours	600
Totals	110	120		1,200

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(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.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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 22, 2007.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E7–21301 Filed 10–29–07; 8:45 am]

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). Primary objectives of the meeting will include discussion of the following topics: Trinity River Restoration Program (TRRP) decision-making process, TRRP budget, TRRP science program, TRRP implementation planning and progress, and legislative developments. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 1 p.m. to 5 p.m. on Thursday, December 6, 2007 and from 8:30 to 12 noon on Friday, December 7, 2007.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main St., 299 West, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Randy A. Brown of the U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521. Telephone: (707) 822–7201. Randy A. Brown is the working group's Designated Federal Officer. For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093. Telephone: (530) 623–1800, E-mail: *dschleusner@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG).

Dated: October 16, 2007.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E7–21296 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Activities, Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Housing Assistance Application requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget for review after a public comment period as required by the Paperwork Reduction Act. The Bureau is soliciting public comments on the subject proposal.

DATES: Submit comments on or before December 31, 2007.

ADDRESSES: Interested parties are invited to submit written comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Les Jensen, Bureau of Indian Affairs, Department of Interior, 1849 C Street, NW., MS–4513–MIB, Washington, DC 20240. Telephone: (907) 586–7397.

FOR FURTHER INFORMATION CONTACT: Copies of the collection of information form or requests for additional information should be directed to Les Jensen, Bureau of Indian Affairs, Department of Interior, 1849 C Street, NW., MS–4513–MIB, Washington, DC 20240. Telephone: (907) 586–7397.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is needed to establish an applicant's eligibility to receive services under the Housing Improvement Program and to establish the priority order in which eligible applicants may receive services under the program.

II. Method of Collection

The housing regulations at 25 CFR Part 256 contain the program eligibility and selection criteria (§ § 256.6, 256.8, 256.9, 256.10, 256.13, 256.14), which must be met by prospective applicants seeking program services. Information collected from applicants under these regulations provides eligibility and selection data used by the local servicing housing office to establish whether an applicant is eligible to receive services. The local servicing housing office may be a tribal housing office under a Public Law 93–638, Indian Self-Determination contract or a Self-Governance annual funding agreement, or part of the Bureau of Indian Affairs. Additionally, the data is used by the Assistant Secretary—Indian Affairs to establish whether a request for waiver of a specific housing regulation is in the best interest of the applicant and the Federal Government.

III. Data

(1) *Title of the Collection of Information:* 25 CFR 256, Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

OMB Control Number: 1076–0084.

Expiration Date: November 30, 2007.

Type of Review: Renewal of a currently approved information collection.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning an applicant's eligibility to receive services under the Housing Improvement Program and includes:

A. *Applicant Information including:* Name, Current Address, Telephone Number, Date of Birth, Social Security Number, Tribe, Roll Number, Reservation, Marital Status, Name of Spouse, Date of Birth of spouse, Tribe of spouse, and Roll Number of Spouse.

B. *Family Information including:* Name, Date of Birth, Relationship to Applicant, and Tribe/Roll Number.

C. *Income Information:* Earned and Unearned Income.

D. *Housing Information including:* Location of the house to be repaired, constructed, or purchased. Description of housing assistance for which applying. Knowledge of receipt of prior Housing Improvement Program assistance, amount to whom and when. Ownership or rental; availability of electricity and name of electric company. Type of sewer system. Water source. Number of bedrooms. Size of house, and Bathroom facilities.

E. *Land Information including:* Landowner; Legal status of land; or Type of interest in land.

F. *General Information including:* Prior receipt of services under the Housing Improvement Program and description of such; Ownership of other

housing and description of such; Identification of Housing and Urban Development funded house and current status of project; Identification of other sources of housing assistance for which the applicant has applied and been denied assistance if applying for a new housing unit or purchase of an existing standard unit; and advisement and description of any severe health problem, handicap or permanent disability.

G. *Applicant Certification including:* Signature of Applicant and Date, and Signature of Spouse and Date.

(3) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive services under the Housing Improvement Program. The information is collected to determine applicant eligibility for services and applicant priority order to receive services under the program.

(4) *Description of Likely Respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:*

Description of Affected Entities: Individual members of Federally recognized Indian tribes who are living within a designated tribal or legally defined service area and who apply for assistance under the Housing Improvement Program.

Estimated Number of Respondents: 8,000.

Proposed Frequency of Response: Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

Estimated Number of Annual Responses: 8,000.

Estimated Time per Application: 1 hour.

Estimated Total Annual Burden Hours: 8,000 hours.

IV. Request for Comments

We specifically request your comments concerning the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden to collect the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; the comments will also become a matter of public record. All written comments will be available for public inspection in Room 335B of the Main Interior Building, 1849 C Street, NW., Washington, DC 20240, from 9 a.m. until 4 p.m., Monday through Friday, excluding legal holidays.

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.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from the public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: October 1, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. 07–5387 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–4J–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Certificate of Degree of Indian or Alaska Native Blood Information Collection, Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Agency Information Collection.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from persons seeking proof of American Indian or Alaska Native blood, as required by the Paperwork Reduction Act. The information collected under OMB Control Number 1076–0153 will be used to establish that the applicants meet requirements for official recognition as an American Indian or Alaska Native for purposes of eligibility determination and participation in programs administered through the U. S. Bureau of Indian Affairs.

DATES: Submit comments on or before *December 31, 2007.*

ADDRESSES: Written comments can be sent to Ms. Daisy West, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Daisy West, Chief, Division of Tribal Government Services, (202) 513–7626.

SUPPLEMENTARY INFORMATION: This collection was originally approved and assigned OMB Control No. 1076–0153 when it was submitted with a proposed rulemaking, 25 CFR Part 70, which was published in the **Federal Register** on April 18, 2000 (66 FR 20775). The proposed rulemaking has not been finalized due to various reasons. We are in the process of developing guidance for processing applications for Certificates of Degree of Indian or Alaska Native Blood (CDIB).

Request for Comments

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as Control No. 1076–0153, and it expires 11/30/2007. The response is voluntary to obtain or retain a benefit.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during the hours of 8 a.m. to 3 p.m., EST, Monday through Friday except for legal holidays. If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Information Collection Abstract

OMB control number: 1076–0153.

Type of review: Renewal.

Brief description of collection: The information will be used to establish that the applicants have Indian or Alaska Native ancestry from a tribe

indigenous to the United States, and the degree of Indian or Alaska Native blood will be documented by using historical records prepared by the Bureau of Indian Affairs. The CDIB will be used for purposes of eligibility determination and participation in programs administered through the U. S. Bureau of Indian Affairs.

Affected Entities: Individual Indian Applicants.

Estimated number of respondents: 154,980.

Estimated time per response: 1.5 hours.

Number of Annual Responses: 154,980.

Total annual burden hours: 232,470 hours.

Dated: October 22, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–21317 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–320–08–1330–NJ; AZA 033922]

Arizona: Temporary Closure of Public Lands; Yuma Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of public lands in La Paz County, Arizona.

SUMMARY: The Bureau of Land Management (BLM), Yuma Field Office, announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. The area affected by this closure is the location of a former mineral material site that is the subject of an ongoing mineral material trespass investigation. The site in its current condition presents numerous physical hazards to the public including open pits, steep drop-offs, and unstable slopes. This action is taken to provide for public safety, prevent theft, and protect natural and cultural resources.

EFFECTIVE DATES: Effective immediately until mineral material trespass investigation is resolved.

FOR FURTHER INFORMATION CONTACT: Bruce Rittenhouse, Assistant Field Manager, Yuma Field Office, Bureau of Land Management, 2555 E. Gila Ridge Road, Yuma, Arizona, 85365, Telephone: 928–317–3200.

SUPPLEMENTARY INFORMATION: This closure applies to public lands directly affected by a mineral material trespass investigation as described below:

Gila and Salt River Meridian, Arizona

T. 4 N., R. 18 W.,
Sec. 25, W½W½SW¼;
Sec. 26, S½S½NE¼, SE¼.

The areas described contain 240 acres in La Paz County.

Marking and effect of closure: BLM lands to be temporarily closed to public use will be identified with appropriate signage. A closure notice will be posted at the BLM Yuma Field Office, the La Posa Long-Term Visitor Area, and the five 14-day camping areas around Quartzsite, Arizona. Uses that may be affected by this closure include, but are not limited to, vehicular access (on-road and off-road), hiking, camping, hunting, and rockhounding,

Exceptions: Closure restrictions do not apply to: (1) Medical/rescue, law enforcement, and fire fighting personnel; (2) any BLM employee, agent, contractor, or cooperator while in the performance of an official duty.

Authority: 43 CFR 8364.1.

Penalties. Any person failing to comply with this closure order may be subject to imprisonment not to exceed 12 months; and/or a fine not to exceed $1,000 in accordance with the applicable provisions of 18 U.S.C. 3571.

Dated: October 17, 2007.

Bruce Rittenhouse,

Assistant Field Manager for Resources, Lands, and Minerals and Acting Field Manager.

[FR Doc. E7–21289 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–310–1430–EU; IDI–34916]

Notice of Realty Action: (Non-Competitive) Direct Sale of Public Lands, Bonneville County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described 1.25-acre public land parcel near Swan Valley, Bonneville County, Idaho, has been examined and found suitable for title transfer by (non-competitive) direct sale to Dale E. McDowell, Louise J. Prudhomme and George McDowell reserving a conservation easement to the United States. The sale will be conducted under the authority of section 203(f)(2) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et. seq.* (FLPMA) and CFR 2711.3–3(a), and will take place according to procedures governing direct sale of public land.

DATES: On or before December 1, 2007, interested parties may submit comments concerning the proposed sale to the BLM Upper Snake Field Office Manager at the below address. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this notice to the Upper Snake Field Office Manager, BLM Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Detailed information including but not limited to documentation relating to compliance with all applicable environmental and cultural resource laws is available for review at the BLM Upper Snake Field Office. 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 information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Jan Parmenter, Realty Specialist, at the above address, or call: (208) 524–7521.

SUPPLEMENTARY INFORMATION: The following described public land in Bonneville County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. The BLM has identified the parcel as follows:

Boise Meridian, Idaho

T. 2 N., R.43 E.,
Sec. 17, N½NE¼NE¼SW¼NW¼.

The land described above contains approximately 1.25 acres. Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. These lands are being offered for sale to the proponent at no less than the appraised fair market value (FMV) of $6,000.00, as determined by the authorized officer after appraisal.

An appraisal report has been prepared by a State certified appraiser for the purposes of establishing FMV. This parcel of land located near Swan Valley, Idaho, is being offered for sale through direct sale procedures. The land meets the criteria for direct sale, pursuant to 43 CFR 2711.3–3(a)(5), to resolve inadvertent unauthorized use and occupancy of the lands and pursuant to 43 CFR 2710.0–3(a)(3) which states, ''Such tract, because of its location or

other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.''

This 1.25-acre parcel is not required for any Federal purposes. It has been determined that this parcel is impractical to manage as part of the public lands. BLM has determined that resource values will not be adversely affected by title transfer of this 1.25-acre parcel to non-Federal ownership. Sale of the parcel conforms to criteria of the BLM Medicine Lodge Resource Management Plan (RMP) approved in April 1985. The patent, when issued, will contain the following reservations, covenants, terms and conditions:

1. The parcel will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. The patentee, by accepting the patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the grantor, its employees, agents, contractor, or lessees, or a third party arising out of, or in connection with, the grantor's use and/or occupancy of the deeded real property resulting in: Violations of Federal, State and local laws and regulations that are now, or in the future become, applicable to the real property: (1) Judgments, claims, or demands of any kind assessed against the United States; (2) costs, expenses, or damages of any kind incurred by the United States; (3) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s) as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (4) other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the deeded real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (5) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the deeded real property and may be enforced by the United States in a court of competent jurisdiction.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

3. The patent shall reserve a conservation easement in perpetuity on the entire 1.25 acre parcel.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the general mining laws. The segregation will end upon issuance of patent or other documents of conveyance for such lands, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of this publication, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2711.2(a), prior to the termination date.

No warranty of any kind, expressed or implied, is given by the United States as to the title, the parcel's physical condition or potential uses. The conveyance will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, or local government laws, regulations, or policies that may affect the subject parcel or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**. In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the $50.00 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft, or cashier's check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. Failure or refusal by Dale E. McDowell, Louise J. Prudhomme, and George McDowell to submit the required fair market appraisal amount within 180 days of the sale of the parcel will constitute a waiver of this preference consideration and this parcel may be offered for sale on a competitive or modified competitive basis.

(Authority: 43 CFR 2711.1–2)

Dated: September 24, 2007.

Wendy Reynolds,

Upper Snake Field Manager.

[FR Doc. E7–21312 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Central Planning Area (CPA), Oil and Gas Lease Sale 206 (2008) Environmental Assessment (EA)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: The MMS is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, that the MMS has prepared an EA for proposed OCS oil and gas Lease Sale 206 in the Central GOM Planning Area (Lease Sale 206) scheduled for March 2008. The preparation of this EA is an important step in the decision process for Lease Sale 206. The proposal for Lease Sale 206 was identified by the Call for Information and Nominations published in the **Federal Register** on April 28, 2006, and was analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222—Final Environmental Impact Statement(EIS); Volumes I and II* (Multisale EIS, OCS EIS/EA MMS 2007–018).

The proposal does not include approximately 5.8 million acres located in the southeastern part of the Central Planning Area which the Gulf of Mexico Energy Security Act of 2006 opened to leasing after many years of

appropriations Acts containing leasing moratoria. Because of the limited geological and geophysical data available to industry and the limited environmental review for this area, the MMS has decided that it would be premature to offer this area in proposed Lease Sale 206. Before the area is offered for lease, the MMS will conduct a separate NEPA review to reevaluate the expanded CPA sale area.

This EA for proposed Lease Sale 206 reexamined the potential environmental effects of the proposed lease sale and its alternatives excluding the unleased blocks near biologically sensitive topographic features; excluding the unleased blocks within 15 miles of the Baldwin County, Alabama Coast; and no action based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared. No new significant impacts were identified for proposed Lease Sale 206 that were not already assessed in the Multisale EIS. As a result, the MMS determined that a Supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Mail Stop 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In April 2007, the MMS published a Multisale EIS that addressed 11 proposed Federal actions that would offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the 11 Western Planning Area (WPA) and CPA lease sales scheduled in the proposed *OCS Oil and Gas Leasing Program: 2007–2012* (5-Year Program). The Multisale EIS addressed WPA Lease Sale 204 in 2007, Sale 207 in 2008, Sale 210 in 2009, Sale 215 in 2010, and Sale 218 in 2011; and CPA Lease Sale 205 in 2007, Sale 206 in 2008, Sale 208 in 2009, Sale 213 in 2010, Sale 216 in 2011, and Sale 222 in 2012. Although the Multisale EIS addresses 11 proposed lease sales, at the completion of the EIS process, Records of Decision were published in July and August 2007 for only proposed WPA Lease Sale 204 and proposed CPA Lease Sale 205, respectively. An additional NEPA review (an EA) was conducted for proposed Lease Sale 206 to address any new information relevant to the proposed lease sale. Additional NEPA reviews will also be conducted prior to decisions on each of the eight subsequent proposed lease sales. The purpose of these EA's is to determine whether to prepare a FONNSI or a Supplemental EIS. For each proposed lease sale, MMS prepares a Consistency Determination (CD) to determine whether the lease sale is consistent with each affected State's federally-approved coastal zone management program. Finally, MMS solicits comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale 206 is as follows: CD's sent to affected States, October 2007; PNOS sent to governors of the affected States, October 2007; Final Notice of Sale published in the **Federal Register**, February 2008; and Lease Sale 206, March 2008.

Public Comments: Interested parties are requested to send comments on this EA/FONNSI by November 29, 2007. Comments may be submitted in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on CPA Lease Sale 206 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the MMS e-mail address: *environment@mms.gov.*

All comments received will be considered in the decisionmaking process for proposed Lease Sale 206.

EA Availablity: To obtain a copy of this EA, you may contact the MMS, GOM OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view this EA on the MMS Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.*

Dated: October 1, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–21275 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Eastern Gulf of Mexico (GOM) Planning Area, Proposed Oil and Gas Lease Sale 224, March 2008

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of the Final Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The MMS has prepared a Final SEIS on a tentatively scheduled 2008 oil and gas leasing proposal (Sale 224) in the Eastern GOM Planning Area, off the States of Louisiana, Mississippi, Alabama, and Florida. As mandated in the recently enacted Gulf of Mexico Energy Security Act (GOMESA) of 2006 (Pub. L. 109–432, December 20, 2006), MMS shall offer a portion of the ''181 Area,'' located in the Eastern Planning Area, more than 125 miles from Florida for oil and gas leasing.

Authority: The NOA is published pursuant to the regulations (40 CFR 1503) under the authority of the National Environmental Policy Act (NEPA); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.).

SUPPLEMENTARY INFORMATION: The recently enacted GOMESA of 2006 (Pub. L. 109–432, December 20, 2006) mandated MMS to offer a portion of the ''181 Area'' located in the newly defined Eastern Planning Area, more than 125 miles from Florida and west of the Military Mission Line (86 degrees, 41 minutes 30 seconds West longitude) for oil and gas leasing ''as soon as practicable, but not later than 1 year, after the date of enactment of this Act.'' The Act mandates offering this area ''notwithstanding the omission of the 181 Area * * * from any Outer Continental Shelf leasing program under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).'' However, this action is not exempted from other legal requirements, such as NEPA or the Coastal Zone Management Act (CZMA). The MMS has prepared a SEIS to the original Sale 181 EIS (2001) in order to address these requirements. The earliest MMS would be able to meet these requirements and offer this area for leasing would be approximately March 2008. To meet the 1-year requirement of GOMESA, this sale should be held no later than December 2007; however, MMS feels that it is in the best interests of all parties, including the American public as owners of these resources, that MMS take the time necessary to fully comply

with all pertinent laws, rules, and regulations, and to allow the public an opportunity to participate in the NEPA process. It also is more economical and efficient for the Government and industry to hold this sale in conjunction with Central Planning Area Sale 206 at the same time and location. The area to be offered in Sale 224 is small, approximately 118 tracts, whereas recent Central Planning Area sales have offered over 4,000 tracts. The logistics of holding a sale are intensive and relatively costly; therefore, it makes sense to hold the smaller sale in conjunction with a larger sale. Additionally, holding Sale 224 in conjunction with Sale 206 would help ensure that a sufficient number of companies would be represented in bidding, which may enhance the number of bids and possibly the revenue generated by more competitive bidding.

The final SEIS associated with this NOA updated the environmental and socioeconomic analyses in the *Gulf of Mexico OCS Oil and Gas Lease Sale 181, Eastern Planning Area Final EIS* (OCS EIS/EA MMS 2001–051), which addressed the original ''Sale 181 Area.''

SEIS Availability: To obtain a single, printed or CD–ROM copy of the final SEIS, you may contact the MMS, GOM 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 final SEIS is available at the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.* Many libraries along the Gulf Coast have been sent copies of the final SEIS. To find out which libraries, and their locations, have copies of the final SEIS for review, you may contact the MMS Public Information Office or visit the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/libraries.html.*

Comments: Federal, State, and local government agencies, and other interested parties are requested to send their written comments on the final SEIS in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on the Lease Sale 224 SEIS'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the MMS e-mail address: *environment@mms.gov.*

Comments should be submitted no later than 30 days from the publication of this NOA.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by phone at (504) 736–2793.

Dated: October 12, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–21279 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 206 in the Central Planning Area (CPA) in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed Sale 206.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 206 in the CPA. This notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 206 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 19, 2008.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 206 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: October 23, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E7–21274 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 224 in the Eastern Planning Area (EPA) in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed sale 224.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 224 in the EPA. This notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 224 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 19, 2008.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 224 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: October 23, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E7–21278 Filed 10–29–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) requested and received emergency approval on the collection of information; Interagency Access Pass Application Process (OMB #1024–0252), which expires on October 31, 2007. The NPS invites public comments on the extension of this currently approved collection.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before November 29, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0252), Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608), Washington, DC 20240; or by e-mail at *brandon_flint@nps.gov.,* or by fax at (202) 371–2401.

FOR FURTHER INFORMATION CONTACT: Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608), Washington, DC 20240; phone (202) 513–7096; e-mail: *brandon_flint@nps.gov.,* or by fax at (202) 371–2401.

Comments Received on the 60-Day Federal Register Notice: The NPS published the 60-Day **Federal Register** Notice to solicit comments on this ICR on May 25, 2007 (Vol. 72, pages 29351–29352). The comment period ended on July 24, 2007. There were no public comments received as a result of publishing this notice.

SUPPLEMENTARY INFORMATION:

Title: The Interagency Access Pass Application Process.

Bureau Form Number: None.

OMB Number: 1024–0252.

Expiration Date: 10/31/2007.

Type of Request: Extension of a currently approved information collection.

Description of Need: The currently approved information collection responds to The Federal Lands Recreation Enhancement Act (FLREA) which requires the Secretary of Agriculture and the Secretary of the Interior to make the America the Beautiful—The National Parks and Federal Recreational Lands Pass available, for free, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705 (20)(B)(i)). The Act further requires that the applicant provide adequate proof of the disability and such citizenship or residency. The Act specifies that the Pass shall be valid for the lifetime of the pass holder. The America the Beautiful—The National Parks and Federal Recreational Lands Access Pass (Interagency Access Pass) was crated to meet the requirements of the FLREA. An Interagency Access Pass is a free, lifetime permit that is issued without charge by the Bureau of Land Management, Bureau of Reclamation, United States Fish and Wildlife Service, United States Forest Service, and the National Park Service to citizens or persons who are domiciled (permanent residents) in the United States, regardless of age, and who have a medical determination and documentation of permanent disability. Furthermore, the Pass is nontransferable and entitles the permittee and any person accompanying him in a single, private, non-commercial vehicle, or alternatively, the permittee and three adults to enter with him where entry to the area is by any means other than private, non-commercial vehicle. The Pass must be signed by the holder.

In order to issue the Interagency Access Pass only to persons who have been medically determined to be permanently disabled, in accordance with the FLREA direction, and in order to clarify, simplify, and provide uniform guidance for the public on the process for obtaining the Interagency Access Pass, the Secretaries of Agriculture and Interior established eligibility and required documentation guidelines for issuing the Interagency Access Pass and published them within the America the Beautiful—The National Parks and Federal Recreational Lands Pass Standard Operating Procedures. The procedures require the individual to appear in person and sign the Pass in the presence of the issuing agency officer. Acceptable documentation to verify that the individual had been medically determined to have a permanent disability includes:

A statement signed by a licensed physician attesting that the applicant has a permanent physical, mental, or sensory impairment that substantially limits one or more major life activities, and stating the nature of the impairment; Or

A document issued by a Federal agency, such as the Veteran's Administration, which attests that the applicant has been medically determined to be eligible to receive Federal benefits as a result of blindness or permanent disability. Other acceptable Federal agency documents include proof of receipt of Social Security Disability Income (SSDI) or Supplemental Security Income (SSI); Or

A document issued by a State agency such as the vocational rehabilitation agency, which attests that the applicant has been medically determined to be eligible to receive vocational rehabilitation agency benefits or services as a result of medically determined blindness or permanent disability. Showing a State motor vehicle department disability sticker, license plate or hang tag is not acceptable documentation;

Information available to the general public through agency Web sites and publications will inform potential Pass applicants of the documentation requirements. However, there are instances where applicants learn about the Pass when arriving at a recreation site and do not have the required documentation available. For those instances, a fourth option is available. If a person claims eligibility for the Access Pass, but cannot produce any of the documentation outlined, that person must read, sign, and date the Statement of Permanent Disability Form in the presence of the officer issuing the Pass. If the applicant cannot read and/or sign, someone else may read, date, and sign the statement on his/her behalf in the applicant's presence and in the presence of the officer issuing the Pass. The Interagency Access Pass replaces the Golden Access Passport that was established in 1980 by an amendment to the Land and Water Conservation Fund Act (L&WCFA) of 1965. Previously issued Golden Access Passports will remain valid for the lifetime of the Passport holder. The requested information and Statement of Permanent Disability have been collected and used since the creation of the Golden Access Passport in 1980 to verify that the individual had been medically determined to have a permanent disability for the issuance of the Golden Access Passport under OMB

control number 0596–0173, under the authority of the L&WCFA.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that OMB will be able to do so.

Description of respondents: United States citizens or persons domiciled in the United States who have been medically determined to be permanently disabled for the purposes of Section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)).

Estimated average number of respondents: 73,400 per year.

Estimated average number of responses: 73,400 per year.

Estimated average time burden per respondent: 5 minutes.

Frequency of response: Once per respondent.

Estimated total annual reporting burden: 6,117 hours.

Dated: October 24, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–5389 Filed 10–29–07; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

Certain Orange Juice From Brazil; Dismissal of Request for Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) investigation concerning the Commission's affirmative determination in investigation No. 731–TA–1089 (Final), Certain Orange Juice from Brazil.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and Commission rule 207.45, that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review in less than 24 months the Commission's final affirmative determination in investigation No. 731–TA–1089 (Final). Certain orange juice is provided for in subheadings 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184; *diane.mazur@usitc.gov*), 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 this matter may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Background Information: On January 6, 2006, the Department of Commerce determined that imports of certain orange juice from Brazil are being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act (19 U.S.C. 1673) (71 FR 2183, January 13, 2006); and on March 3, 2006, the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was materially injured by reason of imports of such LTFV merchandise. Accordingly, Commerce ordered that antidumping duties be imposed on such imports (71 FR 12183, March 9, 2006).

On June 13, 2007, the Commission received a request to review its affirmative determination in investigation No. 731–TA–1089 (Final) pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request was filed by Tropicana Products, Inc., Bradenton, FL. Tropicana alleges that shortfalls in the Florida juice orange crop and depleted inventories; significant price increases and a greatly constricted supply; and disruption of the alternative sources of Brazilian supply following imposition of the antidumping duty order have resulted in the domestic orange juice producers being harmed by the order.

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,[1] the Commission published a notice in the **Federal Register** on July 25, 2007,[2] requesting comments as to whether the changed circumstances alleged by the petitioner were sufficient to warrant an investigation to review in less than 24 months the Commission's final affirmative determination. On September 24, 2007, the Commission received comments in support of the request from: (1) Counsel on behalf of Tropicana, the party requesting the review; (2) counsel on behalf of Louis Dreyfus Citrus Inc. (''Louis Dreyfus''), a domestic packager, merchant, and manufacturer of orange juice; (3) counsel on behalf of Cutrale Citrus Juices, Inc., a U.S. producer; Citrus Products, Inc., a U.S. importer; and Sucocitrico Cutrale Lta., a Brazilian exporter (collectively, ''Cutrale Citrus''); (4) counsel on behalf of Fischer S/A Agroindustria, a Brazilian producer, and Citrosuco North America, Inc., a U.S. producer/importer, (collectively, ''Fischer''); (5) Silver Springs Citrus, Inc., a U.S. producer; (6) Cargill Juice N.A., a U.S. producer/importer; and, (7) Vitality Foodservice, Inc., a U.S. purchaser.

A joint response in opposition to the request was received from counsel on behalf of Florida Citrus Mutual (''FCM''), A. Duda & Sons, Inc. (doing business as ''Citrus Belle''), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as ''Southern Gardens'') (collectively, ''domestic producers'').

Analysis: In considering whether to institute a review investigation under section 751(b), the Commission will not institute such an investigation unless it is persuaded there is sufficient information demonstrating:

(1) that there are significant changed circumstances from those in existence at the time of the original investigations,

(2) that those changed circumstances are not the natural and direct result of the imposition of the antidumping and/or countervailing duty order, and

(3) that the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to continuation or recurrence of material injury to the domestic industry, warrant a full investigation.[3] Additionally, in the case of determinations issued less than 24 months before the request for a

[1] 19 U.S.C. 1675 (b).

[2] 72 FR 40896.

[3] See *Gray Portland Cement and Cement Clinker from Mexico*, 66 FR 657400 (December 20, 2001).

review, such as the determination at issue here, the Commission can only institute a changed circumstances review on a showing of ''good cause.''[4] The Commission has previously stated that:

By enacting the good cause provision, Congress intended to create a tougher standard for instituting a review investigation when a request is filed within 24 months. The language used in section 751 indicates that good cause will be found only in an unusual case. * * * What constitutes good cause will necessarily depend on the facts of a particular case. As a general matter, some situations clearly would fall within the purview of the good cause provision such as: (1) Fraud or misfeasance in the original investigation; (2) acts of God, as exemplified in the FCOJ case where a severe freeze after the order was imposed sharply reduced U.S. producers' shipments of frozen concentrated orange juice; and (3) a mistake of law or fact in the original proceeding which renders the original proceeding unfair. This list, of course, is by no means exhaustive.[5]

1. Tropicana Has Not Shown ''Good Cause''

As a threshold matter, while Tropicana argues that ''good cause'' exists for the Commission to institute a changed circumstances review even though the statutorily required 24-month period since publication of the Commission's final determination has not passed, it cites no facts specific to its ''good cause'' argument other than those alleged to show sufficient changed circumstances. As explained above, the Commission has stated that ''good cause'' implies a ''tougher standard'' for instituting reviews within the 24-month period and will be found only in an ''unusual case,'' such as (but not limited to): fraud or misfeasance in the original investigation; acts of God; or a mistake of law or fact in the original proceeding which renders the original proceeding unfair.[6]

The facts alleged by Tropicana are not of the type that would meet this higher standard. Tropicana does not allege fraud, misfeasance, or mistake of law or fact in the original investigation. Although Tropicana alleges that the effects of the 2004/2005 hurricanes that reduced the domestic producers' supply of oranges were not fully known until after the Commission's determination, the Commission took the hurricanes and reduced supply into account in its original decision.[7] This case is thus distinguishable from the 1984 case on *Frozen Concentrated Orange Juice from Brazil,* Inv. No. 751–TA–10 (Review), where the Commission found ''good cause'' and instituted a changed circumstances review on the basis of a severe freeze in Florida that occurred *after* the Commission's determination and sharply reduced domestic production, contributing to a surge in demand for the Brazilian product.[8]

Moreover, as explained below, the facts alleged by Tropicana do not even show sufficient changed circumstances to warrant a review, much less ''good cause.''

2. Tropicana Has Not Shown Sufficient Changed Circumstances

The information available, including that provided by Tropicana in its request, does not demonstrate, as it must:

(1) That there are significant changed circumstances from those in existence at the time of the original investigation;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping duty order; and

(3) That the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to the continuation or recurrence of material injury to the domestic industry, warrant a full investigation.[9]

With respect to the first factor—significant changed circumstances from those in existence at the time of the original investigation—many of the facts alleged by Tropicana and others supporting review do not even constitute changes or differences from circumstances that existed during the original investigation and were considered by the Commission in its final determination. For example, the hurricanes and citrus canker disease that allegedly reduced the supply of juice oranges to the domestic producers occurred during the original period of investigation and were noted by the Commission, as was the decline in domestic orange juice production.[10] That these effects may have continued after the Commission's determination is not evidence of new circumstances but of a continuing trend.[11] Because orange trees take between 4 and 12 years from planting to bear fruit,[12] it is not surprising or unexpected that domestic production would not quickly return to pre-hurricane levels. In addition, there is evidence that this trend has begun to reverse itself in that Florida juice orange production for 2007/2008 is estimated to increase substantially over the previous year.[13] Moreover, even if the alleged circumstances represented changes since the original period of investigation, they are not significant changes, but merely the normal fluctuations that occur in agricultural production due to factors such as weather and disease.

Another alleged change is the decline in U.S. retail demand for orange juice, which Tropicana and others attribute to the rise in retail orange juice prices since the Commission's original determination due to short supply of both juice oranges and orange juice. However, the Commission noted in its original determination that the parties all agreed that the popularity of low carbohydrate diets during the period examined had reduced the demand for orange juice.[14] Thus, the alleged change is not a change at all, but a circumstance already in existence at the time of the original investigation.

Parties in favor of instituting a review also point to a shortfall in domestic orange juice production, due to the effects of weather and disease on orange crop production. However, reduced orange juice production had already begun to manifest itself during the original investigation period, and is therefore not a change.[15] We also note that increased imports and drawdown of burdensome inventories have compensated for any shortfall in U.S. production since the original determination.[16]

With respect to the second factor—that the changed circumstances are not

[4] 19 U.S.C. 1675(b)(4).

[5] *Porcelain-on-Steel Cooking Ware from Taiwan,* Views of the Commission Concerning its Determination to Not Institute a Review of Inv. No. 731–TA–299, USITC Publication 2117, Aug. 1988, pp. 7–8.

[6] *Porcelain-on-Steel Cooking Ware from Taiwan,* USITC Pub. 2117 (Aug. 1998) at 7–8.

[7] *Certain Orange Juice from Brazil,* USITC Pub. 3838 (March 2006), at 14–15.

[8] *Frozen Concentrated Orange Juice from Brazil,* USITC Pub. 1623 (Dec. 1984). The Commission decided on review that the short-term effects of the freeze would dissipate and that the domestic industry remained vulnerable to the effects of imports from Brazil.

[9] *Silicon Metal from Argentina, Brazil, and China*, 63 FR 52289 (Sept. 30, 1998). *See, generally, A. Hirsh, Inc.* v. *United States*, 737 F. Supp. 1186 (Ct. Int'l Trade 1990); *Avesta AB* v. *United States*, 724 F. Supp. 974 (Ct. Int'l Trade 1989), *aff'd*, 914 F.2d 232 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 1308 (1991).

[10] *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006), at 14–15.

[11] *Stainless Steel Plate from Sweden*, 50 FR at 43614 (review petition denied where, inter alia, petitioner's asserted changed circumstance was based on ''merely a continuation of a trend'' which was discussed in the Commission's determination resulting in the imposition of the order).

[12] *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006) at III–4, n.13.

[13] Domestic Producers' Comments at 6.

[14] *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006) at 16.

[15] *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006) at 20, n. 143.

[16] Domestic Producers' Comments at 16.

the natural and direct result of the imposition of the antidumping duty order—Tropicana and others allege that, in contrast to what would be expected under the order, domestic production has continued to decline and imports have increased. Contrary to these allegations, however, the evidence indicates that changes that have occurred in the U.S. market are expected results of the order. That is, while domestic production continued to decline, U.S. prices have increased.[17] Higher prices, including higher import prices, are expected and positive effects of the order for domestic producers.

Given these results, the increase in imports since the order does not constitute a changed circumstance not resulting from the order sufficient to warrant a review. The purpose of an antidumping duty order is not to curtail or disrupt import supply into the U.S. market, but to ensure that import prices reflect fair market value. The Commission recognized in its original determination that imports help meet U.S. demand for orange juice when U.S. supply is temporarily affected by short orange crop years due to weather, disease and other factors.[18] As the Commission stated in its original determination in this case, and in denying a similar request for a changed circumstances review in *Polychloroprene Rubber from Japan*,

> [W]hile short supply conditions are a relevant condition of competition, * * * there is no short supply provision in the statute and the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports.[19]

Finally, with respect to the third factor, neither Tropicana nor the other parties supporting review have put forth sufficient evidence to show that the alleged changed circumstances indicate that revocation of the order would not be likely to lead to the continuation or recurrence of material injury to the domestic industry. In fact, the evidence they have cited would indicate the opposite. The fact that U.S. production has continued to decline, would indicate if anything, that the industry has not fully recovered from the adverse effects of subject imports, as well as adverse weather and disease conditions, and is vulnerable to continued injury if the order were revoked. In addition, imports have increased since the order was imposed, and there is no indication or allegation that Brazil has less capacity or incentive to increase its shipments to the United States absent the order. Record evidence in fact suggests that from 2005/2006 to 2006/2007, Brazilian orange juice production, exports, and end-of-period inventories grew.[20] Moreover, data also show that after the order was imposed the average customs value per SSE liter of imports from Brazil rose.[21] Likewise, there is no indication or claim that Brazilian prices would not return to pre-order levels if the order were revoked.

In sum, Tropicana has not provided adequate evidentiary support for its allegations that sufficient changed circumstances and ''good cause'' exist for the Commission to institute a review. The circumstances allegedly fail to satisfy these requirements because they (1) do not constitute changes since the original determination or are not significant changes; (2) do not constitute circumstances that are not a direct and natural result of the order; and (3) do not indicate, so as to justify proceeding to a full review, that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to the domestic industry.

In light of the above analysis, the Commission under section 751(b) of the Act determines that institution of an investigation to review in less than 24 months the Commission's final affirmative determination in investigation No. 731–TA–1089 (Final), *Certain Orange Juice from Brazil*, is not warranted.

Issued: October 24, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21299 Filed 10–29–07; 8:45 am]

BILLING CODE 7020–02–P

[17] Domestic Producers' Comments at 16–17.

[18] *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006) at 20–21.

[19] *Polychloroprene Rubber from Japan*, 71 FR at 17140; see also *Certain Orange Juice from Brazil*, USITC Pub. 3838 (March 2006) at 20, n. 143.

[20] Domestic Producers' Comments at 27–29.

[21] Domestic Producers' Comments at 17.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1135 (Preliminary)]

Sodium Metal From France

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping duty investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731-TA–1135 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of sodium metal, provided for in subheading 2805.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 7, 2007. The Commission's views are due at Commerce within five business days thereafter, or by December 14, 2007.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187/*fred.ruggles@usitc.gov*), 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 at 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed effective October 23, 2007, by E.I. DuPont de Nemours & Co., Wilmington, DE, on behalf of the domestic industry that produces sodium metal.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an

entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 13, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (*202–205–3187/fred.ruggles@usitc.gov*) not later than November 9, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 16, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 25, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21300 Filed 10–29–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2007, and published in the **Federal Register** on June 20, 2007, (72 FR 34039), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine dimesylate (1205), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 22, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–21311 Filed 10–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2007, and published in the **Federal Register** on June 20, 2007, (72 FR 34039), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Oxycodone (9143), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 22, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–21323 Filed 10–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Office of Small Business Programs; Proposed Collection; Comment Request

AGENCY: Office of the Secretary, DOL.

ACTION: Notice; opportunity to comment on a proposed collection of information.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Small Business Programs (OSBP) is soliciting comments concerning the proposed continuation of the information collections contained in the Small Business Programs Information Management System. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the **ADDRESSES** Section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** Section below on or before December 31, 2007.

ADDRESSES: Send comments to Brenda R. Berry, Management Analyst, U.S. Department of Labor, Office of Small Business Programs, Room C–2313, 200 Constitution Avenue, NW., Washington, DC 20210; E-Mail: *berry.brenda@dol.gov*; Telephone: 202–693–6479; Fax: 202–693–6486 (these are not a toll free numbers).

FOR FURTHER INFORMATION CONTACT: The employee listed above in the **ADDRESSES** Section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies are required to promote procurement opportunities for small, small disadvantaged, and 8(a) businesses by the Small Business Act, as amended, (Public Law 95–507, Sections 8 and 15) and Public Law 100–656 (Sections 502 and 503). The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) mandates similar efforts for small women-owned businesses. Public Law 106–50 created the program for service-disabled veteran-owned small businesses. Public Law 105–135 established the HubZone program. The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) requires Federal agencies to make available to small businesses compliance guides and assistance on the implementation of regulations and directives of enforcement laws they administer. Executive Orders 13256, 13230, and 13270 direct Federal agencies to implement programs, respectively, regarding Historically Black Colleges and Universities, Educational Excellence for Hispanic Americans, and Tribal Colleges and Universities that are administered by the respective White House Initiative offices (in the U.S. Department of Education). Executive Order 13125 directs Federal agencies to ensure that Asian Americans and Pacific Islanders are afforded opportunity to fully participate in Federal Programs. Further, Executive Order 13170 requires that Departments take a number of actions to increase outreach and maximize participation of small disadvantaged businesses in their procurements. Executive Order 13157 strengthens the executive branch's commitment to increased opportunities for women-owned small businesses. Accordingly, the Small Business Programs Information Management System is needed to gather, document, and manage identifying information for four Office of Small Business Programs constituency groups: Small Businesses; Trade Associations; Minority Colleges and Universities; and Tribal Governments. Via this system, the constituent groups will have the opportunity to voluntarily provide to OSBP information about their organizations. The information will be used by OSBP and DOL agencies to maximize communication with the respective constituency groups regarding relevant OSBP and DOL programs, initiatives, and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for OSBP-sponsored activities.

II. Review Focus

The Office of Small Business Programs is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Currently, the Office of Small Business Programs (OSBP) is soliciting comments concerning the proposed continuation of the information collections contained in the Small Business Programs Information Management System. The estimated public burden associated with this collection of information is summarized below:

Type of Review: Extension of a currently approved collection.

Agency: Office of Small Business Programs.

Title: Small Business Program Information Management System.

OMB Number: 1290–0002.

Agency Form Number: None.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Governments.

Estimated Total Annual Respondents: 500.

Estimated Total Annual Responses: 1,000.

Frequency: On Occasion.

Estimated Average Time Per Response: 5–7 minutes.

Estimated Total Annual Burden Hours: 160 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 24th day of October 2007.

Jose A. Lira,

Director, Office of Small Business Programs.

[FR Doc. E7–21308 Filed 10–29–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0074]

OSHA–7 Form (''Notice of Alleged Safety and Health Hazards''); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on the OSHA–7 Form.

DATES: Comments must be submitted (postmarked, sent, or received) by December 31, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0074, U.S. Department of Labor, Occupational Safety and Heath Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0074). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Under paragraphs (a) and (c) of 29 CFR 1903.11 (''Complaints by employees'') employees and their representatives may notify the OSHA area director or an OSHA compliance officer of safety and health hazards regulated by the Agency that they believe exist in their workplaces at any time. These provisions state further that this notification must be in writing and ''shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of the employee.''

In addition to providing specific hazard information to the Agency, paragraph (a) permits employees/employee representatives to request an inspection of the workplace. Paragraph (c) also addresses situations in which employees/employee representatives may provide the information directly to the OSHA compliance officer during an inspection. An employer's former employees may also submit complaints to the Agency.

To address the requirements of paragraphs (a) and (c), especially the requirement that the information be in writing, the Agency developed the OSHA–7 Form; this form standardized and simplified the hazard reporting process. For paragraph (a), they may complete an OSHA–7 Form obtained from the Agency's Web site and then send it to OSHA online, or deliver a hardcopy of the form to the OSHA area office by mail or facsimile, or by hand. They may also write a letter containing the information and hand deliver it to the area office, or send it by mail or facsimile. In addition, they may provide the information orally to the OSHA area office or another party (e.g., a Federal safety and health committee for Federal employees), in which case the area office or other party completes the hardcopy version of the form. For the typical situation addressed by paragraph (c), an employee/employee representative informs an OSHA compliance officer orally of the alleged hazard during an inspection, and the compliance officer then completes the hardcopy version of the OSHA–7 Form; occasionally, the employee/employee representative provides the compliance officer with the information on the hardcopy version of the OSHA–7 Form.

The information in the hardcopy version of the OSHA–7 Form includes information about the employer and alleged hazards, including: The establishment's name, mailing address, and telephone and facsimile numbers; the site's address and telephone and facsimile numbers; the name and telephone number of the management official; the type of business; a description and the specific location of the hazards, including the approximate

number of employees exposed or threatened by the hazards; and whether or not the employee/employee representative informed another government agency about the hazards (and the name of the agency if so informed).

Additional information on the hardcopy version of the form addresses the complainant including: Whether or not the complainant wants OSHA to reveal their name to the employer; whether the complainant is an employee or an employee representative, or for information provided orally, a member of a Federal safety and health committee or another party (with space to specify the party); the complainant's name, telephone number, and address; and the complainant's signature attesting that they believe a violation of an OSHA standard exists at the named establishment; and the date of the signature. An employee representative must also provide the name of the organization they represent and their title.

The information contained in the online version of the OSHA–7 Form is similar to the hard copy version. However, the online version requests the complainant's e-mail address, and does not ask for the establishment's and site's telephone and facsimile numbers and the complainant's signature and signature date.

The Agency uses the information collected on the OSHA–7 Form to determine whether reasonable grounds exist to conduct an inspection of the workplace. The description of the hazards, including the number of exposed employees, allows the Agency to assess the severity of the hazards and the need to expedite the inspection. The completed form also provides an employer with notice of the complaint and may serve as the basis for obtaining a search warrant if an employer denies the Agency access to the workplace.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

Requirements relating to the OSHA–7 Form. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: OSHA–7 Form (''Notice of Alleged Safety and Health Hazards'').

OMB Number: 1218–0064.

Affected Public: Individuals or households.

Number of Respondents: 48,298.

Frequency of Recordkeeping: On occasion.

Total Responses: 48,298.

Average Time per Response: Varies from 15 minutes (.25 hour) to communicate the required information orally to the Agency to 25 minutes (.42 hour) to provide the information in writing and send it to OSHA.

Total Burden Hours Requested: 12,775.

Estimated Cost (Operation and Maintenance): $990.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0074). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (67 FR 31159).

Signed at Washington, DC, on October 24, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–21287 Filed 10–29–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0075]

Standard on the Control of Hazardous Energy (Lockout/Tagout); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on the Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147).

DATES: Comments must be submitted (postmarked, sent, or received) by December 31, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0075, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0075). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov*; index however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to control the release of hazardous energy sources while employees service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible; proper control of hazardous energy sources prevent death or serious injury among these employees.

Energy Control Procedure (paragraph (c)(4)(i)). With limited exception, employers must document the procedures used to isolate from its energy source and render inoperative, any machine or equipment prior to servicing, maintenance, or repair by employees. These procedures are necessary when activation, start up, or release of stored energy from the energy source is possible, and such release could cause injury to the employees.

Paragraph (c)(4)(ii) states that the required documentation must clearly and specifically outline the scope, purpose, authorization, rules, and techniques employees are to use to control hazardous energy, and the means to enforce compliance. The document must include at least the following elements:

(A) A specific statement regarding the use of the procedure;

(B) Detailed procedural steps for shutting down, isolating, blocking, and securing machines or equipment to control hazardous energy, and for placing, removing, and transferring lockout or tagout devices, including the responsibility for doing so; and,

(C) Requirements for testing a machine or equipment to determine and verify the effectiveness of lockout or tagout devices, as well as other energy control measures.

The employer uses the information in this document as the basis for informing and training employees about the purpose and function of the energy control procedures, and the safe application, use, and removal of energy controls. In addition, this information enables employers to effectively identify operations and processes in the workplace that require energy control procedures.

Periodic Inspection (paragraph (c)(6)(ii)). Under paragraph (c)(6)(i), employers are to conduct inspections of energy control procedures at least annually. An authorized employee (other than an authorized employee using the energy control procedure that is the subject of the inspection is to conduct the inspection and correct any deviations or inadequacies identified. For procedures involving either lockout or tagout, the inspection must include a review, between the inspector and each authorized employee, of that employee's responsibilities under the procedure; for procedures using tagout systems, the review also involves affected employees, and includes an assessment of the employees' knowledge of the training elements required for these systems. Paragraph (c)(6)(ii) requires employers to certify the inspection by documenting the date of the inspection, and identifying the machine or equipment inspected and the employee who performed the inspection.

Training and Communication (paragraph (c)(7)(iv)). Paragraph (c)(7)(i) specifies that employers must establish a training program that enables employees to understand the purpose and function of the energy control procedures, and provides them with the knowledge and skills necessary for the safe application, use, and removal of energy controls. According to paragraph (c)(7)(i), employers are to ensure that: Authorized employees recognize the applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control; affected employees obtain instruction on the

purpose and use of the energy control procedure; and other employees who work, or may work, near operations using the energy control procedure receive training about the procedure, as well as the prohibition regarding attempts to restart or reactivate machines or equipment having locks or tags to control energy release.

Under paragraph (c)(7)(ii), when the employer uses a tagout system, the training program must inform employees that: Tags are warning labels affixed to energy isolating devices, and, therefore, they do not provide the physical restraint on those devices that locks do; employees are not to remove tags attached to an energy isolating devices unless permitted to do so by the authorized employee responsible for the tag, and they are never to bypass, ignore, or in any manner defeat the tagout system; tags must be legible and understandable by authorized and affected employees, as well as by other employees who work, or may work, near operations using the energy control procedure; the materials used for tags, including the means of attaching them, must withstand the environmental conditions encountered in the workplace; tags evoke a false sense of security, and employees must understand that tags are only part of the overall energy control program; and they must attach tags securely to energy isolating devices to prevent removal of the tags during use.

Paragraph (c)(7)(iii) states that employers must retrain authorized and affected employees when a change occurs in: Their job assignments, the machines, equipment, or processes such that a new hazard is present; and the energy control procedures. Employers also must provide retraining when they have reason to believe, or periodic inspection required under paragraph (c)(6) indicates, that deviations and inadequacies exist in an employee's knowledge or use of energy control procedures. The retraining must reestablish employee proficiency and, if necessary, introduce new or revised energy control procedures.

Under paragraph (c)(7)(iv), employers are to certify that employees completed the required training, and that this training is up-to-date. The certification is to contain each employee's name and the training date.

Training employees to recognize hazardous energy sources and to understand the purpose and function of the energy control procedures, and providing them with the knowledge and skills necessary to implement safe application, use, and removal of energy controls, enables them to prevent serious accidents by using appropriate control procedures in a safe manner to isolate these hazards. In addition, written certification of the training assures the employer that employees receive the training specified by the Standard.

Disclosure of Inspection and Training Certification Records (paragraphs (c)(6)(ii) and (c)(7)(iv)). The inspection records provide employers with assurance that employees can safely and effectively service, maintain, and repair machines and equipment covered by the Standard. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard, and that the machines and equipment are safe for servicing, maintenance, and repair. The training records provide the most efficient means for an OSHA compliance officer to determine whether an employer has performed the required training.

Notification of Employees (paragraph (c)(9)). This provision requires the employer to notify affected employees prior to applying, and after removing, a lockout or tagout device from a machine or equipment. Such notification informs employees of the impending interruption of the normal production operation, and serves as a reminder of the restrictions imposed on them by the energy control program. In addition, this requirement ensures that employees do not attempt to reactivate a machine or piece of equipment after an authorized employee isolates its energy source and renders it inoperative. Notifying employees after removing an energy control device alerts them that the machines and equipment are no longer safe for servicing, maintenance, and repair.

Off-site Personnel (Contractors, etc.) (paragraph (f)(2)(i)). When the on-site employer uses an off-site employer (e.g., a contractor) to perform the activities covered by the scope and application of the Standard, the two employers must inform each other regarding their respective lockout or tagout procedures. This provision ensures that each employer knows about the unique energy control procedures used by the other employer; this knowledge prevents any misunderstanding regarding the implementation of lockout or tagout procedures, and the use of lockout or tagout devices for a particular application.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on the Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147). The Agency is requesting a net decrease of 407,924 burden hours (from 3,421,527 to 3,013,603). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Standard on the Control of Hazardous Energy (Lockout/Tagout).

OMB Number: 1218–0150.

Affected Public: Business or other for-profit.

Frequency of Recordkeeping: Initially; Annually; On occasion.

Number of Respondents: 769,748.

Total Responses: 83,380,843.

Estimated Time per Response: Varies from 15 seconds (.004 hour) for an employer or authorized employee to notify affected employees prior to applying, and after removing, a lockout/tagout device from a machine or equipment to 80 hours for certain employers to develop energy control procedures.

Total Burden Hours: 3,013,603.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0075). You may supplement electronic submissions by uploading document files electronically. If you wish to mail

additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on October 24, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–21288 Filed 10–29–07; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–12]

Notice of Entering Into a Compact With the Government of Mongolia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of Mongolia. The President of the United States of America and the President of Mongolia executed the Compact documents on October 22, 2007.

Dated: October 24, 2007.

William G. Anderson Jr.,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of Mongolia

A. Introduction

Mongolia is a landlocked country with a population of approximately 2.6 million, located between Russia and China. Nearly half of the population is concentrated in Ulaanbaatar, its capital, about 60% lives along the rail corridor between Russia and China, and the remainder is largely dispersed throughout the country. Mongolia's aging transport infrastructure and weak institutions are a significant constraint to economic growth and development, particularly given the pressures of the country's abrupt transition to a market economy, the collapse of financial support from Russia, and the rapid urbanization of what traditionally has been a highly dispersed rural herding society. The Government of Mongolia (''GoM'') has proposed a $285 million, five-year MCA program (''Program'') comprising the Rail Project, the Property Rights Project, the Vocational Education Project, and the Health Project, as further described below (each, a ''Project''). The proposed Program is intended to release the potential of certain critical interlocking human, institutional, and physical resources that factor centrally in Mongolia's efforts to broaden and deepen economic development. The Program is expected to have a significant direct impact on individuals living in poverty, and significant indirect and ancillary benefits by creating new economic opportunities and increasing the capacity of individuals and groups to participate fully in and benefit from economic growth.

B. Program Overview and Budget

Description	Timeline						Total ($US Mil)
	CIF ($US Mil)	CY1 ($US Mil)	CY2 ($US Mil)	CY3 ($US Mil)	CY4 ($US Mil)	CY5 ($US Mil)	
Rail Project	0	26.06	44.50	52.68	61.94	3.20	188.38
Property Rights Project	0.17	2.99	8.18	7.08	3.51	1.13	23.06
Vocational Education Project	0.23	2.09	8.29	8.40	5.41	1.10	25.51
Health Project	0.19	2.24	4.40	4.56	2.92	2.72	17.03
Program Administration & Audits	4.40	5.17	4.61	4.32	3.85	3.89	26.23
Monitoring & Evaluation	0.04	0.56	0.47	0.47	0.39	2.77	4.70
Total	5.02	39.12	70.44	77.50	78.01	14.82	284.91

The Program's goal is to reduce poverty through economic growth. Specifically, by 2028, the Program is expected to benefit directly approximately 3.1 million Mongolians, roughly 95% of the country's projected population in that year. As a result of the Program, we expect per capita incomes for all Mongolians to be 3.5% higher five years after the start of the Program, and to increase by a total of 4.5% within 20 years after the start of

the Program. These increases correspond to increments of $158 million to annual GDP after five years, and $404 million after 20 years.

1. Rail Project

Mongolia's rail system is the transportation backbone of the economy, contributing more to GDP than in any other country.[1] The rail system moves 97% of the ton-kilometers of freight transport in Mongolia. The existing railway company (''MTZ''), in which the GoM and Government of the Russian Federation each own a 50% interest, operates Mongolia's railway system. This system, with its antiquated infrastructure, equipment and practices, cannot meet current demand for rail services and poses a serious economic bottleneck by limiting growth in domestic and foreign trade and associated investment, and contributing to inflation. The proposed Rail Project addresses this bottleneck through improvements in the efficiency and capacity of the rail system, thereby creating new jobs in industries and businesses related to or served by the rail system. To ensure these improvements are sustainable, the Project promotes international-standard rail operations and management practices, transparency of rail finances, and commercialization of the rail system—all part of the foundation for greater private sector involvement and competition in rail transport.

The Rail Project includes (a) the acquisition of certain key rail assets (e.g., locomotives, wagons, signaling equipment and track maintenance equipment) needed to improve efficiency and capacity on the country's single track rail line, (b) the establishment of a new, initially government-owned, contractor-operated leasing company (''LeaseCo'') to lease rail assets on commercial terms to MTZ and independent shippers, (c) substantial operational training and financial management technical assistance to MTZ, and (d) technical assistance to the Mongolia Railway Authority (''MRA''), the recently established regulator of the rail sector. The use of LeaseCo allows the Program to avoid the risks inherent in making equipment available directly to MTZ prior to its achieving commercialization and an acceptable level of transparency. Success will be measured by the increase in Mongolian traffic on the rail system, enhanced revenues for both shippers and the rail system, positive changes in the efficiency of MTZ's operations, and increased economic growth associated with rail traffic capacity and efficiency improvements.

2. Property Rights Project

The inability of Mongolians to easily register and obtain clear title to their land poses a serious obstacle to the GoM's promotion, through policy and legal reforms, of private real property ownership. Implementation problems have limited access to credit for small landholders and small business people, discouraged investment, and slowed the deepening of local financial markets. The proposed Property Rights Project will help Mongolian citizens obtain secure, long-term rights to the suburban and peri-urban land they occupy, and promote investments in home improvement, business activities, and agricultural productivity. In a banking sector marked by high interest spreads, the Project will encourage financial institutions to reduce the risk premium on credit by providing their customers with a more secure source of collateral and encourage the emergence of new mortgage-related and other asset-dependent financial products.

This Project will improve the accuracy, accessibility and efficiency of the formal system for recognizing and transferring land rights and will facilitate issuance of up to 75,000 privatized and registered land titles to suburban landholders. The Project also will introduce a long-term leasing system on peri-urban rangeland and other incentives (e.g., technical assistance, wells, animal shelters and fences) that will enable leaseholders to significantly increase income from this land by improving range and livestock management. For the urban component, success will be measured by increases in the number of registered property owners, greater access to credit among project beneficiaries, and higher land values in project areas. For the peri-urban component, success will be measured by improved herd productivity, and a significant rise in leaseholder household incomes.

3. Vocational Education Project

Mongolia's vocational education system has not evolved to serve the demands of a modern, private-sector led economy. The capacity of this system to teach core technical skills and provide critical labor information is weak, training equipment is limited and outdated, and instructors ill-prepared to teach. Essential public-private partnerships to ensure that students receive high quality, demand-driven training are largely absent, and credentialing systems are substandard. As a result, Mongolia imports skilled labor from other markets, leaving high rates of unemployment among unskilled Mongolians, especially youth. The Vocational Education Project will address these problems by building on and significantly extending the work of other donors, especially the Asian Development Bank (''ADB'') and Gesellschaft für Technische Zusammenarbeit (''GTZ''), and by supporting the newly adopted Mongolian National Vocational Education Program.

Specifically, the Project will (a) strengthen the institutional framework needed to support a demand-driven vocational education system, (b) define industry-led skills training standards for occupations and translate these standards into a modern vocational education curricula supported by new instructional materials and equipment, (c) develop 30 new career preparation tracks, and (d) improve teacher training and professional development. To complete the linkage between the public training and private sector employers, the Project also will develop a career guidance and labor market information system.

Success will be measured by (a) increased numbers of trainees passing rigorous skills evaluations, (b) adoption of effective public-private partnerships demonstrated by increased private funding of vocational education institutions, (c) significant increases in the rate of employment in the target population, and (d) more rapid movement from training to employment.

4. Health Project

Mongolia has rapidly increasing rates of non-communicable diseases and injuries (''NCDIs''), including cardiovascular disease (''CVD''), diabetes, cancers and injury-induced trauma. Mongolia's mortality and morbidity rates from CVD and cancers greatly exceed those of Western countries and now represent the major cause of death and disability, particularly in younger age groups (*i.e.*, 35 to 55 years of age). Trauma response and emergency medicine are under-developed. At the same time, current NCDI programs in Mongolia are treatment based, with inadequate attention to cost-effective NCDI prevention, early detection, where relevant, and disease management. This has a negative impact on the productivity of the labor force, which is disproportionately affected by NCDIs, and is a significant drain on scarce public health investments. The

[1] With 4.93 traffic units (TUs) per $ of GDP, compared to the world average of 0.42 TUs/$ of GDP, Mongolia ranks first among world railways (*http://www.adb.org/documents/reports/consultant/best-practices-railways/study-report.pdf*).

Mongolian medical system is undertaking a slow and difficult transition from expensive specialist and tertiary services to a system with equal emphasis on public health, client information, and prevention efforts. To date, donor funded programs to reorient the medical system have largely focused on communicable diseases and child health. The evolving epidemiological profile calls for extension of these public health and medical practice changes to emphasize NCDI prevention and adult health maintenance. The Health Project focuses on extending the productive years and productivity of the labor force by reducing the incidence and severity of NCDIs such as cancer, CVD, diabetes and preventable accidents and trauma, and reducing and refocusing total health expenditure.

Specifically, the Health Project will support (a) research on NCDI related behaviors and practices in Mongolia, (b) site visits to successful NCDI programs in other countries, (c) communications and education interventions to promote risk behavior changes, (d) new treatment and disease management protocols, (e) a limited amount of equipment and intensive in-service training for early detection of cervical and breast cancers, and (f) training of physicians and general medical personnel in NCDI disease management. The Project funds NCDI outreach, screening, and disease management for a significant proportion of the Mongolian population (up to 60%, as estimated by population linked to the proposed intervention sites) over the five year term of the Compact, with extensive monitoring, evaluation and feedback to ensure successful interventions and the transmission of best practices to all participants.

Success will be measured by the Project's impact on (a) risk behavior knowledge and practices, (b) medical services provider attitudes and practices, (c) early detection of targeted cancers, (d) the number of clients screened for hypertension and diabetes and management of these conditions, and (e) reduction in the incidence of targeted accidents and trauma. Ultimately, the economic impact of the Project will occur through reductions both in (a) the productivity costs to individual Mongolians and the Mongolian economy and (b) health system expenditures for management and treatment of NCDIs.

C. Program Management

The GoM will establish MCA-Mongolia with a Board of Directors to oversee overall Program management and a Technical Secretariat to oversee implementation. Four project implementation units (each, a ''PIU'') embedded in related GoM agencies will provide day-to-day project management for all Projects, except the Rail Project, which will utilize the services of an external firm. MCA-Mongolia will hire an environmental and social oversight consultant to support the environmental and social aspects of Program implementation.

The GoM is in the process of selecting, through competitive processes, third party, non-government entities to provide procurement and fiscal agent services to MCA-Mongolia, which selection is expected to be made in October 2007.

D. Assessment

1. Economic Analysis

The economic rate of return (''ERR'') for the overall Program over a 20-year time horizon is estimated to be 28.6% in the base case. The table below summarizes the ERR and estimated numbers of beneficiaries for each project.

ERR Summary

Project	MCC investment cost	Base case ERR (hurdle = 15%)	Expected range of ERR	
			Low (percent)	High (percent)
Rail Project	$188,380,000	30	19	41
Property Rights Project: Registration	16,250,000	38	13	64
Property Rights Project: Peri-Urban	6,810,000	27	16	33
Vocational education Project	25,510,000	20	8	26
Health Project	17,030,000	21	2	37

Estimated Beneficiaries (Year 2028)

Rail Project	2,395,000
Property Rights Project: Registration	470,000
Property Rights Project: Peri-Urban	4,000
Vocational education Project	822,000
Health Project: Patients and their dependents	219,000
Health Project: System beneficiaries	3,371,000
Estimated Total Unique Beneficiaries (minus System Beneficiaries from Health Project)	3,131,000

Estimated Number of Beneficiaries by Income Group (Year 2028)

Project	USD per person per day (PPP)				Total
	<$1	$1–$2	$2–$4	>$4	
Rail Project	345,000	682,000	787,000	581,000	2,395,000
Property Rights Project: Registration	70,000	137,000	153,000	110,000	470,000
Property Rights Project: Peri-Urban	500	800	1,000	1,800	4,100
Vocational education Project	102,000	156,000	202,000	361,000	821,000
Health Project: Patients and their dependents	21,000	36,000	48,000	113,000	218,000
Health Project: System beneficiaries	640,000	809,000	775,000	1,146,000	3,370,000

Estimated Number of Beneficiaries by Income Group (Year 2028)

Project	USD per person per day (PPP)				Total
	<$1	$1–$2	$2–$4	>$4	
Estimated Unique Beneficiaries by Income Group (minus System Beneficiaries from Health Project)	431,000	810,000	954,000	934,000	3,129,000

(Minor differences in total beneficiary numbers between above tables due to rounding.)

2. Consultative Process

To develop a proposal for MCC funding, the GoM conducted extensive consultations with the private sector and civil society involving broad public participation across the country. Members of the public, including women's and environmental groups, were asked to identify the primary constraints to economic growth in Mongolia, as well as potential uses of MCC funding to remove such constraints. Thereafter, Mongolia's MCA-National Council, formed by the GoM with broad stakeholder representation, incorporated the results of these consultations into a proposal for MCC funding. The proposed Program consists of Projects identified by Mongolians to address some of the primary constraints to economic growth in Mongolia and to reflect their expressed view that poverty reduction can follow only from a systematic effort to broaden the economic base and to increase the productive capacity of Mongolians, both individuals and enterprises, to participate effectively in opportunities for growth in the domestic and regional economies.

During implementation of the Program, MCA-Mongolia will continue public consultations with a range of stakeholders, including women and other vulnerable groups, to ensure participation during development and implementation of all the Projects.

3. GoM Commitment and Effectiveness

The GoM has demonstrated commitment to the Compact development process by (a) assembling a 23-member MCA-National Council, (b) conducting extensive public consultations on various proposals over a two-year period throughout the country, (c) forming a technical working group for each project composed of highly talented volunteers from the public and private sector, and (d) hiring a number of highly competent experts to work with each technical working group to develop the Projects. Senior GoM officials, including the President, have expressed publicly strong support for the Compact and made themselves available to meet with MCC staff and advisers. President Enkhbayar has written to President Bush to express his personal commitment to and belief in the importance of the Program. The GoM is committed to assembling a capable team to staff MCA-Mongolia. The Prime Minister will be the Chairman of MCA-Mongolia's Board of Directors, and relevant line ministries will be represented on the Board at the minister level.

With respect to policy reform and related matters, the following describes Mongolia's proposed measures to ensure the effectiveness of MCC's proposed investments.

(a) *Rail Project.* The GoM is undertaking legal reforms to reorganize the rail sector, including separating infrastructure from railway operations and increasing the competitiveness of the railway in the regional rail transport market. In 2004, the GoM created MRA, an independent government entity, to oversee and regulate railway safety and implement railway policy relating to both safety and economic issues. Additionally, the GoM has committed to improving MTZ's operations, maintenance, financial management and capital asset development.

(b) *Property Rights Project.* The GoM already has adopted key legislation to enable private ownership of urban real property and the development of a market for such property. In a 2003 land law, the GoM committed to the sustainable use of rangeland, which by encouraging efficient land use and range recovery, should give farmers and herders a better land base for profitable economic activity.

(c) *Vocational Education Project.* The GoM has committed to modernizing the vocational education system and involving the private sector in its management and operation. The GoM has ratified the Master Plan to Develop Education, 2006–2015. In 2006, the GoM modified the Employment Promotion Fund to support private sector development and employment. Finally, amendments to the Vocational Education and Training Law and Employment Promotion Fund that would help students cover tuition fees and help cover key administration costs of the vocational education system have been proposed.

(d) *Health Project.* In 2001, the GoM adopted a State Public Health Plan that declared *public health* a health sector priority and encouraged inter-sectoral (i.e., GoM, NGO, family and community) support for health promoting behavior, as well as equal focus on health promotion, disease prevention and curative care. The GoM approved a Health Sector Strategic Master Plan in 2005 that (i) emphasizes behavioral change and information, education and communication activities to promote healthy lifestyles and (ii) focuses on preventing the most common communicable and non-communicable diseases. Also in 2005, the GoM adopted a national program on the prevention and control of NCDIs based on WHO recommendations and worldwide experience, and many related policy changes (e.g., anti-smoking legislation) have been effected.

4. Sustainability

(a) *Rail Project.* The Rail Project has been designed specifically to address issues of institutional and financial sustainability through: (i) The provision of extensive training and technical assistance to all critical parties—MTZ, LeaseCo and MRA—in management, finance, and operations to ensure that they can function effectively as key components of a modern, commercialized rail system in a market economy, (ii) the organization of institutional relations among the parties to reinforce the commercialization and efficiency of rail operations, (iii) the inclusion of planning for operational sustainability as the heart of the work programs for MTZ and LeaseCo, and (iv) the focus on commercial terms for LeaseCo's operations, to attaining a level of revenue that will sustain its operations beyond the term of the Compact.

(b) *Property Rights Project.* The Property Rights Project will provide technical assistance in the development and implementation of a Registry sustainability plan, including pricing of services to ensure sufficient revenue to improve operations and attract more registrants. Management, operations, and financial training will be provided to registry personnel to institutionalize

''best practices'' for public entities. With respect to the peri-urban land leasing component, leaseholders will make payments for infrastructure and land leasing to district-level governments, which in turn will use these remittances for land management, extension services, well testing, and other services needed by the herder groups. In addition, better rangeland management will increase land productivity capable of supporting increased economic activity in perpetuity.

(c) *Vocational Education Project.* The fundamental objective of the Vocational Education Project is to put Mongolian vocational education and training on a sound and sustainable footing, based on an active partnership between the public and private sectors. This means changing the legal and regulatory environment in the first instance to enable vocational education institutions to operate more efficiently and in better synchronization with the needs of both public and private sector employers. To ensure sustainability, the Project will focus on establishing linkages between and among institutions in the educational sector to ensure that better practices are grounded in working relationships. Finally, it also emphasizes retraining educators and providing revised and re-focused educational and training materials so that the changes become institutionalized. One of the most important elements of the Vocational Education Project is targeted improvement in the income-generating capacity of the Technical and Vocational Education and Training institutes, since enhanced revenues will be critical to sustainability beyond the term of the Compact.

(d) *Health Project.* To enhance sustainability, the Health Project includes capacity building from its start-up phase. A major element of capacity building activities is changing the attitudes and practices of health providers and clients toward cost-effective but ''low-tech'' interventions for prevention and treatment of NCDIs. In addition, as physical health is of particular economic importance to lower income, remote, and vulnerable groups, the GoM will be required to maintain core programs beyond the term of the Compact to ensure access of these groups to prevention, early detection, and health management services on an on-going basis.

5. Environment and Social Impact

MCC will require that all Projects comply with national laws and regulations, MCC's environmental guidelines and gender policy, and World Bank's Operational Policy 4.12 on Involuntary Resettlement. None of the Projects is likely to generate significant adverse environmental, health, or safety impacts, and all expected impacts can be mitigated. However, the Rail Project (''Category A'' according to MCC's environmental guidelines) has the potential to encourage an increase in mineral extraction, which might put unsustainable pressure on the environmental control system, transit trade of timber extracted illegally in Siberia, and trafficking in persons. Potential impacts of the Property Rights Project (''Category B'') include health and safety risks associated with installation of equipment and building rehabilitation in the urban component as well as the potential for depletion of the water table and degradation of pasture land associated with the peri-urban land leasing component due to poor planning. Similarly, potential negative environmental and social impacts of the Vocational Education Project (''Category C'') and the Health Project (''Category C'') include health and safety risks. For the Health Project, these will specifically encompass medical waste management as well as health and safety risks associated with diagnostic equipment. The full scope of the impacts of each of the Projects will be further examined through various environmental and social assessments that the GoM will conduct during the first year of the implementation of the Program. Negative impacts and risks identified through these assessments would be mitigated or managed.

In addition, requirements to ensure Project compliance with MCC's environmental and social standards will include:

(a) *Rail Project.* In light of possible negative direct, induced, trans-boundary and cumulative impacts, a Category A Environmental Impact Assessment and an Environmental Management Plan (*EMP*) will be completed for the complete rail system, identifying necessary mitigation measures. Funding is included for mitigation and enhancement of the capacity of the Mongolian Customs General Administration to enforce and implement environmental laws and regulations applicable to the transport of natural resources.

(b) *Property Rights Project.* The completion of a framework environmental and social assessment and EMPs for all components of the Project will be required.

(c) *Vocational Education Project.* MCA-Mongolia will develop EMPs, including health and safety guidelines for use in the technical and vocational education training institutes in the Project.

(d) *Health Project.* A plan for the safe and proper use of diagnostic equipment will be developed and used, as well as EMPs to address health and safety issues and compliance with existing waste management regulations for all project related services and facilities. The EMP will also include procedures and funding for support of remedial actions to ensure compliance with MCC's environmental guidelines, Mongolian regulations, and access needs for potential beneficiaries.

Positive environmental and social impacts stemming from compact activities include: (i) Increases in fuel efficiency, a reduction in air emissions and improved air quality, increases in employment for disadvantaged groups, and a reduction in the inflationary pressures on such items as fuel (which impact disproportionately on the poor) caused by bottlenecks in the transportation system from the Rail Project, (ii) increases in income from ability to capitalize land assets, reductions in peri-urban land degradation and increases in income for vulnerable groups from livestock productivity gains from the Property Rights Project, (iii) increases in educational and employment opportunities for women, the poor, and other disadvantaged groups from the Vocational Education Project, and (iv) improved health for vulnerable groups (including women), as well as associated improvements in labor productivity from the Health Project.

6. Donor Coordination

MCC has consulted extensively on each of the proposed projects with the major donors in Mongolia, including the World Bank, Asian Development Bank (''ADB''), Gesellschaft für Technische Zusammenarbeit (''GTZ'') and U.S.-Agency for International Development (''USAID''). In the case of the rail project, both the World Bank and ADB have been providing the GoM with support for developing a comprehensive transport strategy, including the promotion of greater financial transparency, regulatory reform, and private sector involvement. The International Finance Corporation recently completed a two-year project to strengthen the regulatory structure for leasing in Mongolia, culminating in the adoption in June 2006 of a new Law on Financial Leasing. These donors, as well as the European Bank for Reconstruction and Development, have expressed an interest in supporting the

proposed project and areas of potential synergies are being explored.

Similarly, with the Property Rights Project, MCC's support will interact with and build upon a variety of efforts made by other donors. Most notably, the ADB's ''Cadastral Survey and Land Registration Project'' has mapped many land parcels slated for privatization and currently is developing a land information system that will serve as an integrated one-stop resource for government and the private sector. The design of the privatization component has drawn heavily from the experience of USAID's ''Ger Initiative,'' which is implementing a variety of economic development efforts in the *ger*-areas of Mongolia's cities. The design of the peri-urban land leasing component stems from experience gained in several prior foreign donor efforts, namely those by the UNDP, the World Bank, a joint project among the GoM, Japan International Cooperation Agency and Food and Agriculture Organization focused on improving efficiencies of the dairy system, and USAID's ''Gobi Initiative.''

For the health and vocational education projects, MCC-funded efforts will complement other donor work supporting Mongolia's social sectors. The proposed Vocational Education Project builds on, and will support the implementation of, the ADB-funded *Third Education Development Project,* the ADB/Volunteer Service Organization program on non-formal construction worker skills training for vunerable youth and poor adults, the GTZ project for *Urban Development, Construction Sector and TVET Promotion Program,* and the ADB/Nordic Development Fund's *Social Security Sector Development Project (2002–2005).* The Health Project will build upon and co-finance well-designed and on-going activities like World Health Organization's laboratory specimen transport system, ADB's physician training in five districts, and the University of Toronto's research on cervical cancer diagnosis. It will also link up with Luxembourg's successful telemedicine project, which is working at the tertiary and secondary level with cardiologists, to see that patients identified with heart problems at the primary care level are referred and treated. With the exception of Luxembourg, none of the other donors are directly targeting the major NCDIs for screening and control or investing in behavior change.

Millennium Challenge Compact Between The United States of America Acting Through the Millennium Challenge Corporation and the Government of Mongolia

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this ''Compact'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''MCC''), and the Government of Mongolia (the ''Government'').

Recalling that the Government consulted with the private sector and civil society of Mongolia to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal for such assistance; and

Recognizing that MCC wishes to help Mongolia implement a program to achieve the Compact Goal and Project Objectives described herein (the ''Program'');

The Government and MCC (the ''Parties'') hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty in Mongolia through economic growth (the ''Compact Goal'').

Section 1.2 Project Objectives

The objectives of the Projects (each, a ''Project Objective'') are:

(a) To increase rail traffic and shipping efficiency through the Rail Project;

(b) To increase the security and capitalization of land assets held by lower-income Mongolians, and to increase peri-urban herder productivity and incomes, through the Property Rights Project;

(c) To increase employment and income among unemployed and marginally employed Mongolians through the Vocational Education Project; and

(d) To increase the adoption of behaviors that reduce non-communicable diseases and injuries that have the greatest impact on mortality (''NCDIs'') among target populations and improve medical treatment and control of NCDIs through the Health Project.

The Government shall take all necessary steps to achieve the Compact Goal and Project Objectives during the Compact Term.

Article 2. Funding and Resources

Section 2.1 MCC Funding

MCC hereby grants to the Government, under the terms of this Compact, an amount not to exceed Two Hundred Eighty-Four Million Nine Hundred Eleven Thousand Three Hundred and Sixty-Three United States Dollars (US$284,911,363) (the ''MCC Funding'') for use by the Government in the implementation of the Program as more specifically described in Annex II of this Compact.

Section 2.2 Compact Implementation Funding

(a) Of the total amount of MCC Funding, MCC shall make up to (i) Four Million One Hundred Eighty-Nine Thousand Three Hundred and Fifty United States Dollars (US$4,189,350),

and (ii) an additional Eight Hundred Thirty Three Thousand Three Hundred and Thirty Three United States Dollars (US$833,333) subject to availability of funds and notification to the Government by MCC (together, the ''Compact Implementation Funding'') available to the Government under section 609(g) of the Millennium Challenge Act of 2003, as amended, for:

(i) Administrative activities (including start-up costs for MCA-Mongolia such as Technical Secretariat salaries, rent, cost of purchasing computers and other information technology or capital equipment and other similar expenses);

(ii) Procurement and start-up activities for key contractors, including but not limited to (1) the outside project management firm for the Rail Project, (2) consultants for each of the Health, Property Rights and Vocational Education Projects, and (3) hiring certain staff for the implementing entities;

(iii) Procurement and initial performance of Fiscal Agent, Procurement Agent and Bank services;

(iv) Procurement and initial performance of financial management services necessary to perform an assessment of UBTZ's books and records;

(v) Training to be provided by the monitoring and evaluation officer of MCA-Mongolia's Technical Secretariat, with input from MCC's expert(s), for the implementing entities and Rail Project outside project management firm to prepare them for their monitoring and evaluation responsibilities; and

(vi) Any other activities relating to the implementation of the Compact, approved by MCC.

(b) Compact Implementation Funding shall be subject to such limitations as MCC may require from time to time.

(c) This section 2.2, and sections 2.6 and 2.7 below, shall be in effect from the date of execution of this Compact by the Parties without regard to the requirements for entry into force provided in section 7.3.

Section 2.3 Disbursement

In accordance with this Compact and the Program Implementation Agreement, MCC shall disburse MCC Funding for expenditures incurred in connection with the implementation of the Program (each, a ''Disbursement''). The proceeds of such Disbursements shall be made available to the Government, at MCC's sole election, (a) by deposit to a bank account established by the Government and acceptable to MCC (a ''Permitted Account'') or (b) through direct payment to the relevant provider of goods, works or services in furtherance of this Compact. MCC Funding shall be expended solely to cover expenditures in connection with the implementation of the Program as provided in this Compact and the Program Implementation Agreement.

Section 2.4 Interest

The Government shall pay to MCC any bank interest or other earnings that accrue on MCC Funding in accordance with the Program Implementation Agreement (whether by directing such payments to a bank account outside Mongolia designated by MCC or otherwise).

Section 2.5 Government Resources; Budget

(a) The Government shall provide all funds and other resources, and shall take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Compact.

(b) The Government shall use its best efforts to ensure that all MCC Funding it receives, or is projected to receive, in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(c) The Government shall not reduce the normal and expected resources that it would otherwise receive, or budget, from sources other than MCC for the activities contemplated under this Compact and the Program.

Section 2.6 Limitations on the Use of MCC Funding

The Government shall ensure that MCC Funding shall not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing by MCC, or by posting on *http://www.mcc.gov* (the ''MCC Web site''), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard as further described in MCC's Environmental Guidelines posted on MCC Web site (as they may be amended from time to time, the ''MCC Environmental Guidelines''); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.7 Taxes

(a) The Government shall ensure that the assistance provided by MCC to the Government under this Compact is exempt from any existing or future taxes, duties, levies, contributions or other similar charges (''Taxes'') by the Government (including any such Taxes of a national, regional, local or other governmental or taxing authority) in accordance with the terms of the ''Agreement Between the Government of the United States of America and the Government of Mongolia Concerning Economic, Technical, and Related Assistance,'' which entered into force on September 8, 1992.

(b) If any Tax has been levied and paid to the Government contrary to the requirements of section 2.7(a) above, the Government shall refund promptly to MCC the amount of such Tax out of its national funds. No MCC Funding, proceeds thereof, nor any Program asset may be applied by the Government in satisfaction of its obligations under this section 2.7.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

The Government shall implement the Program in accordance with this Compact and as further specified in an agreement to be entered into by MCC and the Government and dealing with, among other matters, implementation arrangements, fiscal accountability, disbursement and use of MCC Funding, procurement and applicable tax exemptions (the ''Program Implementation Agreement'').

Section 3.2 Government Responsibilities

(a) The Government shall have principal responsibility for overseeing and managing the implementation of the Program.

(b) The Government shall ensure that no law or regulation in Mongolia now or hereinafter in effect makes, or will make, unlawful, or otherwise prevents, hinders or jeopardizes, the performance of any of the Government's obligations

under this Compact, the Program Implementation Agreement or any other agreement related thereto or any transaction contemplated thereunder.

(c) The Government shall ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely in furtherance of this Compact and the Program.

Section 3.3 Policy Performance

In addition to the specific policy, legal and regulatory reform commitments identified in Annex I to this Compact, the Government shall commit to maintain and improve its level of performance under the policy criteria identified in section 607 of the Millennium Challenge Act of 2003, as amended, and the selection criteria and methodology used by MCC.

Section 3.4 Government Assurances

The Government assures MCC that:

(a) As of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) This Compact does not, and will not, conflict with any other international agreement or obligation of the Government or any of the laws of Mongolia; and

(c) The Government shall not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters

From time to time, MCC may provide guidance to the Government in writing on any matters relating to MCC Funding, this Compact or implementation of the Program (each, an ''Implementation Letter''). The Government shall apply such guidance in implementing the Program.

Section 3.6 Procurement

The Government shall ensure that the procurement of all goods, works and services by the Government or any Provider in furtherance of this Compact will be consistent with MCC's Program Procurement Guidelines posted on the MCC Web site (as they may be amended from time to time, the ''MCC Program Procurement Guidelines''). The MCC Program Procurement Guidelines include, among others, the following requirements:

(a) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(b) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) *Government Books and Records.* The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, accounting books, records, documents and other evidence relating to this Compact (''Compact Records'') adequate to show, to MCC's satisfaction, the use of all MCC Funding. In addition, the Government shall furnish or cause to be furnished all Compact Records to MCC and its auditors when MCC so requests.

(b) *Accounting.* The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in a manner generally consistent with the standards for the private and public sector issued by the International Federation of Accountants (as well as its boards and committees). Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) *Provider; Covered Provider.* Unless the Parties agree otherwise in writing, a ''Provider'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''Covered Provider'' is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) *Access.* Upon MCC's request, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) *Government Audits.* Except as the Parties may otherwise agree in writing, the Government shall, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. In addition, upon MCC's request, the Government shall use, or cause to be used, to conduct such audits an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General of the Millennium Challenge Corporation (the ''Inspector General'') or a United States-based certified public accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''Audit Guidelines'') issued and revised from time to time by the Inspector General. Audits shall be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit shall be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, unless the Parties agree otherwise in writing.

(b) *Audits of United States Entities.* The Government shall ensure that agreements between the Government or

any Provider, on the one hand, and a United States non-profit organization, on the other hand, that are financed with MCC Funding state that the United States non-profit organization is subject to the applicable audit requirements contained in OMB Circular A–133 issued by the United States Government Office of Management and Budget. The Government shall ensure that agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing.

(c) *Corrective Actions.* The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of the Government's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) *Audit by MCC.* MCC shall have the right to arrange for audits of the Government's use of MCC Funding.

(e) *Cost of Audits, Reviews or Evaluations.* MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact, including as reflected in Annex II.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact shall be in writing and, except as otherwise agreed between the Parties, in English. Notice is deemed duly given: (a) Upon personal delivery to the Party notified, (b) when sent by confirmed fax or email, if sent during normal business hours of the recipient Party, if not, then on the next business day, or (c) two business days after deposit with an internationally recognized overnight courier, specifying next day delivery. For this purpose, the address of each Party is set forth below.

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Telephone: (202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President for Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government:

Ministry of Finance, Attention: Hon. Nadmid Bayartsaikhan, Minister of Finance, Government Building 2, United Nation's Street 5/1, Chingeltei District, Ulaanbaatar–210646, Mongolia, Facsimile: 976–11–322866, Telephone: 976–51–262155, E-mail: *bayartsaikhan@mof.pmis.gov.mn.*

With a copy to MCA-Mongolia:

At an address, and to the attention of the person, to be designated in writing to MCC by the Government.

Section 4.2 Representatives

For all purposes of this Compact, the Government shall be represented by the individual holding the position of, or acting as, the Minister of Finance of Mongolia, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives for all purposes other than signing amendments to this Compact. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail shall be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Compact or MCC Funding under this Compact, in whole or in part, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact, the Program Implementation Agreement or any other agreement or arrangement entered into by the Government or MCA-Mongolia in connection with this Compact or the Program;

(ii) An event has occurred that, in MCC's determination, makes it probable that one or more of the Project Objectives will not be achieved during the term of this Compact or that the Government will not be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact has or would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) The Government or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Mongolia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Mongolia for assistance under the Millennium Challenge Act of 2003, as amended; and

(vii) The Government or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements shall cease upon the expiration, suspension, or termination of this Compact; provided, however, that MCC Funding may be used, in compliance with this Compact and the Program Implementation Agreement, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of this Compact before such expiration, suspension or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within one hundred and twenty (120) days after the expiration, suspension or termination of this Compact, so long as the request for such expenditures is submitted within ninety (90) days after such expiration, suspension or termination.

(d) Subject to subsection (c) of this section 5.1, upon the expiration, suspension or termination of this

Compact, (i) any amounts of MCC Funding not disbursed by MCC to the Government shall be released from any obligation in connection with this Compact without any action from the Government or MCC, and (ii) any amounts of MCC Funding disbursed by MCC but not expended under section 2.3 before such expiration, suspension or termination, plus accrued interest thereon, shall be returned to MCC within thirty (30) days after the Government receives MCC's request for such return.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, MCC shall have the right to require that the Government repay to MCC, in United States Dollars, the value of such misused MCC Funding, interest, earnings, or asset, plus interest, within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government shall use national funds (and no MCC Funding or Program assets) to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund shall continue during the term of this Compact and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

The Government's responsibilities under sections 2.4, 2.6, 2.7, 3.7, 3.8, 5.1(c), 5.1(d), 5.2, 5.3, 6.4 and 6.7 of this Compact shall survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex attached hereto constitutes an integral part of this Compact.

Section 6.2 Inconsistencies

In the event of any conflict or inconsistency between:

(a) Any annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 shall prevail; or

(b) This Compact and any other agreement between the Parties regarding the Program, this Compact shall prevail.

Section 6.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of both Parties and subject to the respective domestic approval requirements to which this Compact was subject.

Section 6.4 Governing Law; Status

This Compact is an international agreement and as such will be governed by the principles of international law and shall prevail over the laws of Mongolia. In the event of any conflict between the Compact and another international agreement to which the Government is or becomes a party, the Compact shall prevail.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language shall include activities, obligations and rights undertaken by, existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Website

Any reference in this Compact, the Program Implementation Agreement or any other agreement entered into in connection with this Compact to a document or information available on, or notified by posting on, the MCC Website shall be deemed a reference to such document or information as updated or substituted on the MCC Website from time to time.

Section 6.7 Indemnification

The Government shall indemnify and hold MCC and any MCC officer, director, employee, affiliate, contractor agent or representative (each of MCC and any such persons, an *"MCC Indemnified Party"*) harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damage that both:

(a) Is (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claims; and

(b) Arises from or as a result of the negligence or willful misconduct of the Government or any Government affiliate (including MCA-Mongolia) (directly or indirectly) connected with, any activities (including acts and omissions) undertaken in the furtherance of this Compact; *provided, however,* that the Government shall apply national funds to satisfy its obligations under this section 6.7, and no MCC Funding or Program assets may be applied by the Government in satisfaction of its obligations under this section 6.7.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

The Government shall take all steps necessary to ensure that (a) this Compact and the Program Implementation Agreement and all of the provisions of this Compact and the Program Implementation Agreement are valid and binding and are in full force and effect in Mongolia, (b) this Compact, the Program Implementation Agreement and any other agreement entered into in connection with this Compact to which the Government and MCC are parties will be given the status of an international agreement if so stipulated therein, and (c) no laws of Mongolia (other than the constitution of Mongolia), whether now or hereafter in effect, will take precedence or prevail over the terms of this Compact or the Program Implementation Agreement.

Section 7.2 Conditions Precedent to Entry Into Force

Before this Compact enters into force:

(a) The Government and MCC shall execute the Program Implementation Agreement;

(b) This Compact shall be ratified by the State Great Khural (Parliament) of Mongolia after it is signed;

(c) The Government shall deliver to MCC:

(i) A certificate signed and dated by the Principal Representative of the Government (or such other duly authorized representative of the Government acceptable to MCC) certifying that the Government has taken all steps required under section 7.1;

(ii) A legal opinion from the Minister of Justice and Internal Affairs in form and substance satisfactory to MCC; and

(iii) Complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its website or otherwise make publicly available; and

(d) MCC must determine that, after signature of this Compact, the Government has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry Into Force

This Compact shall enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term

This Compact shall remain in force for five years after its entry into force, unless terminated earlier under section 5.1 (the *''Compact Term''*).

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed, in duplicate, this Compact this 22nd day of October, 2007.

Done at Washington, D.C.

For Millennium Challenge Corporation, on behalf of the United States of America, Name: George W. Bush, Title: President of the United States of America.

For the Government of Mongolia, Name: Nambaryn Enkhbayar, Title: President of Mongolia.

Annex I Summary of Program

A. Program Overview

This Annex I to the Compact summarizes the Program that MCC Funding will support in Mongolia during the Compact Term.

1. Background

Mongolia is landlocked between Russia and China, with approximately 2.6 million inhabitants in a territory of 1.56 million square kilometers. Nearly half of the population is concentrated in Ulaanbaatar, its capital, approximately 60 percent is located along the rail corridor between Russia and China, and the remainder is largely dispersed throughout the country. Mongolia's aging transport infrastructure and weak institutions are a significant constraint to economic growth and development, particularly given the pressures of the country's abrupt transition to a market economy, the collapse of financial support from Russia, and the rapid urbanization of what traditionally has been a highly dispersed rural herding society. The Program is intended to release the potential of certain critical interlocking human, institutional, and physical resources that factor centrally in Mongolia's efforts to broaden and deepen economic development. The Program is expected to have a significant direct impact on individuals living in poverty, and significant indirect and ancillary benefits by creating new economic opportunities and increasing the capacity of individuals and groups to participate fully in and benefit from economic growth.

2. Program

The Program consists of the Rail Project, the Property Rights Project, the Vocational Education Project, and the Health Project, as further described below (each, a *''Project''*).

The Parties may agree to modify or eliminate any Project, or to create a new project, in writing signed by the Principal Representative of each Party without amending this Compact; provided, however, that any such modification or elimination of a Project, or creation of a new project, shall not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1 of this Compact, cause the Government's responsibilities or contribution of resources to be less than specified in this Compact, or extend the Compact Term.

3. Consultative Process

In order to develop a proposal for MCC Funding, the Government conducted a consultative process with the private sector and civil society that involved broad participation of the general public. The public was asked to identify the primary constraints to economic growth in Mongolia, as well as potential uses of MCC Funding to remove such constraints. Thereafter, Mongolia's National Council consulted Mongolia's national development plan and poverty reduction strategy papers and conducted additional targeted consultations with sector experts and stakeholders in order to shape the results of the public consultation into a proposal for MCC Funding. The Program consists of Projects designed to address the primary constraints to economic growth in Mongolia identified in these consultations.

4. Proposals

MCA-Mongolia will arrange procurement of goods, works and services, as appropriate, to implement all Projects under the Compact. MCA-Mongolia will engage a Procurement Agent who will act on its behalf to manage the acquisition of such goods, works and services. All procurements shall be conducted in accordance with the MCC Program Procurement Guidelines.

5. Environmental and Social Oversight, Monitoring and Capacity Building

To ensure that environmental and social safeguards and mitigation measures are implemented for the Program by MCA-Mongolia, MCC Funding will be used to engage an environmental and social oversight consultant to enhance the capacity of MCA-Mongolia. This consultant will also work to enhance the capacity of the Ministry of Nature and Environment to enforce and implement the Government's environmental laws and regulations, to train staff, and identify whether additional staff are needed, to carry out effective environmental oversight and monitoring of the implementation of the Program.

B. Rail Project

1. Background

Mongolia's rail system is the transportation backbone of the economy, contributing more to GDP than in any other country. The rail system moves 97 percent of the ton-kilometers of freight transport in Mongolia. The Ulaanbaatar Railway Joint Stock Company, in which the Government and the Government of the Russian Federation each own a 50 percent interest (''UBTZ'')[2], operates Mongolia's railway system. This system, with its antiquated infrastructure, equipment, and practices, cannot meet current demand for rail services and poses a serious economic bottleneck by limiting growth in domestic and foreign trade and associated investment, and contributing to inflation. The Rail Project addresses this bottleneck through improvements in the efficiency and capacity of the rail system, thereby creating new jobs in industries and businesses related to or served by the rail system.

2. Project

The Rail Project consists of the following activities (each, a *''Project Activity''*):

(a) Rail Sector Technical Assistance Activity.

MCC Funding will be used to provide training and other technical assistance to UBTZ, the Mongolian Railway Authority (*''MRA''*), which is Mongolia's principal regulator of the rail sector, and certain other agencies, to improve their operational, management, maintenance, and regulatory practices. Specifically, MCC Funding will support:

(i) Training of personnel at UBTZ as well as those from the private and public sectors involved in the rail sector of Mongolia in the technology, operation, management and maintenance of locomotives, wagons,

[2] UBTZ is commonly referred to as ''MTZ.'' For the avoidance of doubt, the terms ''UBTZ'' and ''MTZ'' refer to the same legal entity.

signaling and communication equipment and track, as well as in various aspects of railroad operations (including wagon fleet management, intermodal activities, sales and marketing, and financial management and accounting practices);

(ii) Technical assistance to MRA to upgrade its capacity to regulate the rail sector and to strengthen its technical capacities in relevant areas such as rail safety, pricing, and track access licensing;

(iii) Technical assistance to UBTZ in sustainability planning and remediation of accounting practices to adhere to IAS;

(iv) Technical assistance to the Customs General Administration to strengthen its capacity to enforce and implement laws and regulations relevant to the rail sector and to transport of natural resources; and

(v) Identification and management by MCA-Mongolia of environmental, social, health and safety impacts associated with the implementation of the Rail Project, consistent with section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(b) LeaseCo Establishment Activity.

MCC Funding will be used to assist in the formation of a company owned by the Government to own and lease various railway assets under the Rail Project (''LeaseCo''). Specifically, MCC Funding will support:

(i) A regulatory review to determine the optimal method for the development, establishment, management and operation of LeaseCo;

(ii) Assistance in establishing LeaseCo, including forming its board of directors, staffing its management unit, and funding certain other start-up costs;

(iii) An outside project management firm who will work with MCA-Mongolia and relevant ministries and agencies of the Government to prepare the scope of work and bidding documents for contracting a private sector firm to manage and operate LeaseCo (''OpCo''); and

(iv) The oversight of OpCo by an outside project management firm together with MCA-Mongolia and relevant agencies and ministries of the Government to ensure effective management of LeaseCo for purposes of obtaining rail assets through MCC Funding for lease to UBTZ and other rail shippers and operators in Mongolia.

(c) LeaseCo Operation Activity.

MCC Funding will be used to assist LeaseCo in acquiring various railway-related assets to lease to UBTZ and to other rail shippers and operators in Mongolia. Specifically, MCC Funding will support:

(i) The acquisition by LeaseCo of (1) up to approximately 30 freight locomotives, (2) up to approximately 75 new open top freight wagons, (3) up to approximately 75 new specialized freight wagons, (4) track maintenance equipment, and (5) a modernized signaling and communications system for installation on the mainline track (collectively, the ''*LeaseCo Assets*''); and

(ii) The services of OpCo in effectively arranging leases of the LeaseCo Assets to UBTZ and to other rail shippers and operators in Mongolia.

3. Beneficiaries

The upgrading of the railway under the Rail Project is expected to facilitate development in both the project impact area and the nation at large. Potential clients of the upgraded railway include shippers of goods into and out of the area who benefit from lower transport costs (compared, for example, to the transport costs for trucks), businesses seeking new markets in, or goods from, the area, potential investors assessing opportunities in the area, and shippers from other regions and countries whose goods are transiting through the area. In addition, the Rail Project will increase the rail system's capacity to haul minerals to markets, thus leading to more jobs in mining and cargo-handling. The overall direct effect on employment is expected to be approximately 21,000 additional jobs created over 20 years. Of these, 5,300 jobs are expected to be at the low-or unskilled level, and over 2,600 are targeted for the poor. More broadly, over 20 years, approximately 2,395,000 people are expected to benefit from increased economic activity attributable to the railway investment.

4. Donor Coordination

The Rail Project builds upon the work of other donors to Mongolia. For instance, both the World Bank and the ADB have supported the Government in developing a comprehensive transport strategy. In addition, the International Finance Corporation recently completed a project to strengthen the regulatory structure for leasing in Mongolia while the European Bank for Reconstruction and Development assisted the Government with planning various developments in the transport sector. While no donor is currently working directly in the rail sector, during the implementation of the Rail Project, further collaboration with other donors is expected.

5. USAID

USAID currently does not focus specifically on the rail sector in Mongolia. However, the Government expects to work with USAID, as appropriate, to identify potential opportunities for coordination with respect to the Rail Project.

6. Sustainability

In order for the Rail Project to be sustainable, the Government will undertake certain policy, legal and regulatory reforms affecting the rail sector as further outlined in paragraph 7 below. In addition, to ensure the environmental and social sustainability of the Rail Project, the Government will cause MCA-Mongolia to engage in on-going public consultations in which various stakeholders in the Rail Project, including women and other vulnerable groups, are given the opportunity to participate during the development and implementation of the Rail Project. Finally, in light of the possible negative direct, induced, and transboundary impacts of the Rail Project (including: anticipated increases in extractive industries; illegal timber extraction originating from northern Mongolia and eastern Russia; and illegal trafficking in persons), the completion of an environmental and social impact assessment (that includes an EMP) will be a condition precedent to certain Disbursements for the acquisition by LeaseCo of certain equipment described in paragraph 2(c) of Part B of this Annex I of the Compact.

7. Policy, Legal, Regulatory and Other Reforms; Covenants

(a) The implementation by the Government of the following policy, legal, regulatory and other reforms described below, satisfactory to MCC, shall be conditions precedent to certain Disbursements:

(i) UBTZ shall commit to undertake continued track, bridge and culvert maintenance as well as annual track upgrades to R65 rails for approximately 35 km of track for each of 2007 and 2008 and approximately 50 km of track annually thereafter during the Compact Term, and UBTZ shall deliver to MCA-Mongolia annual reports on such maintenance and upgrades;

(ii) UBTZ shall commit to making progress towards bringing its financial systems, books and records in line with IAS and to having its financial statements audited at certain intervals as agreed by the Parties during the Compact Term by a qualified international auditing firm in accordance with IAS; and

(iii) UBTZ shall commit to lease newly acquired rail equipment from LeaseCo, to allow LeaseCo to lease such equipment to both UBTZ and other shippers at fair market rates, and to

allow such equipment to operate on UBTZ's tracks.

(b) The Government shall ensure that all revenues received by LeaseCo (above a threshold amount agreed by the Parties) which are generated through use of the LeaseCo Assets shall, during the period of the Compact, be used solely for (i) maintenance and repair of the LeaseCo Assets, (ii) acquisition, maintenance and repair of additional rail-related assets from time to time, based on a sustainable LeaseCo business plan approved by MCC and (iii) other uses for which MCC has provided prior written approval.

(c) The Government shall ensure that neither the LeaseCo Assets nor revenues generated thereby or assets purchased therewith are provided directly or indirectly to UBTZ or any other Government entity other than on arms-length, commercial terms approved by MCC.

(d) The Government shall ensure that LeaseCo is not privatized and does not dispose of the LeaseCo Assets nor revenues generated thereby or assets purchased therewith during the Compact period, either in whole or in part, without MCC's prior written approval of the terms and conditions of such privatization or disposal.

(e) The parties agree that LeaseCo is being created in order to contribute to the emergence of a commercially operated, competitive, and efficient rail system in Mongolia, and MCC relies on the Government's assurances that it intends to continue LeaseCo's operations beyond the Compact term, in accordance with the objectives and operating principles applicable to LeaseCo during the Compact term.

C. Property Rights Project

1. Background

A steady stream of poor rural Mongolians are abandoning traditional nomadic herding practices and migrating to the cities in search of better lives. The bulk of these migrants are moving to Mongolia's three biggest cities—Ulaanbaatar, Erdenet and Darkhan—where they either settle in suburban ''*ger* areas'' or peri-urban rangeland areas. Mongolian law gives *ger* area residents the right to obtain ownership to the land upon which they live. However, the complexity and expense of the ownership process make it difficult for these people to become owners in fact and thus capture the full benefits of ownership. In peri-urban rangelands, Mongolia's tradition of open access pasture use, combined with the influx of migrants' herds, has led to overgrazing and triggered interest in new land-use regimes that will encourage investment, improved land use, and higher agricultural productivity. The Property Rights Project is expected to improve the accuracy and accessibility of the formal system for recognizing and transferring land rights and for issuing fully marketable private land titles to *ger* area residents. In addition, the Property Rights Project will introduce a system of leasing peri-urban rangelands to herder groups in lieu of open access, and provide key infrastructure and training so that they can improve livestock management, productivity and, ultimately, farm income.

2. Project

The Property Rights Project consists of the following activities (each, a ''*Project Activity*''):

(a) Improvement of the Land Privatization and Registration System Activity.

MCC Funding will be used to improve the formal system of privatizing and registering land rights. Specifically, MCC Funding will support:

(i) A commission of stakeholders and technical experts to study the obstacles that affect the ability of Mongolian citizens to privatize and register land efficiently and cost-effectively, to make recommendations on how to reduce such obstacles, and to work with Government agencies, the State Great Khural (Parliament), and non-government specialists and interest groups to substantially implement the recommendations;

(ii) Upgrade of the geospatial infrastructure necessary for accurate land parcel mapping, including provision of Continually Operating Reference Stations (CORS), supply of Global Positioning System (GPS) equipment to regional land offices, and training on the use of each;

(iii) Capacity building for land offices, including creation and support of land market specialist positions to help citizens resolve issues related to land privatization and registration, and training of land office staff in land law, land mapping, use of satellite imagery, and processing of applications for privatization of *ger* area land plots;

(iv) Upgrade of the State Registry's central office space, information technology platform and business processes, establishment of offices in at least four districts of Ulaanbaatar, and similar upgrades of State Registry offices in eight regional centers around the country; and

(v) Identification and management of environmental, social, health and safety impacts associated with implementation of this Project Activity, consistent with section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(b) Privatization & Registration of Ger Area Land Plots Activity.

MCC Funding will be used to privatize and register approximately 75,000 land plots in the *ger* areas of Ulaanbaatar and eight regional centers. Specifically, MCC Funding will support:

(i) Provision of fully privatized and registered ownership rights to the land plots of low and middle income households;

(ii) Identification of main utility corridors;

(iii) Mapping of public land areas (parks, schools, public buildings, etc.) within the *ger* areas; and

(iv) Identification and management of environmental, social, health and safety impacts associated with implementation of this Project Activity, consistent with Section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(c) Peri-Urban Land Leasing Activity.

MCC Funding will be used to identify and lease approximately 300 serviced tracts of rangeland to herder groups in the peri-urban areas of Darkhan, Erdenet, and Ulaanbaatar. Specifically MCC Funding will support:

(i) Production of maps for each peri-urban area showing the location of herders, the lands they use, and identifying suitable leasing sites;

(ii) Installation of wells and supplying of materials for construction of fences and animal shelters on the suitable leasing sites;

(iii) Selection of herder groups to receive leases to the tracts of rangeland (including wells, fences and animal shelters) through a public, transparent and fair process. These herder groups will sign lease contracts that include a requirement to make land use payments covering the private good component of the well, fence and animal shelter investment;

(iv) Training of herder groups to improve their skills in range management, herd productivity, and business and marketing, including stock density management, monitoring rangeland carrying capacity, well operation and maintenance, capturing precipitation run-off, fodder/feed storage techniques, and business and marketing plans. Also, local land and agricultural officials will receive training on their related responsibilities; and

(v) Identification and management of environmental, social, health and safety impacts associated with the implementation of this Project Activity,

consistent with section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

3. Beneficiaries

Approximately 75,000 households are expected to gain marketable title to their land plots in *ger* areas as a result of the Property Rights Project. People who are able to use a more accurate and user-friendly registration system to document property purchases, sales and other economic transactions will benefit as well. Similarly, since banks will have better information about prospective borrowers, commercial lending should increase and borrowing costs should decrease. Some 300 herder groups (representing approximately 1,000 households) are expected to lease peri-urban rangelands, engage in better livestock production practices, and subsequently increase their incomes.

4. Donor Coordination

The Property Rights Project builds upon a variety of other donor's efforts. Most notably, the Property Rights Project makes use of the results of ADB's ''Cadastral Survey and Land Registration Project'' that has mapped many land parcels slated for privatization and currently is developing a land information system to which the State Registry will supply information on legal rights to land. Moreover, the design of the Peri-Urban Land Leasing Activity is informed by, among others, past efforts of the United Nations Development Programme and the World Bank, and complements an ongoing project being implemented by the Government, the Japan International Cooperation Agency and the Food and Agriculture Organization to improve efficiencies in the dairy system.

5. USAID

The Property Rights Project has drawn heavily from the experience of USAID's ''GER Initiative'' that is implementing a variety of economic development efforts in the *ger* areas of Mongolia's cities. In addition, lessons learned from USAID's ''Gobi Initiative,'' focused on enterprise development and improved incomes of families in and around the Gobi region, will inform the final design of the Peri-Urban Land Leasing Activity. Furthermore, the Government expects to work with USAID as appropriate to identify potential opportunities for coordination with respect to the Property Rights Project.

6. Sustainability

As conditions precedent to certain Disbursements, the Government will be required to provide additional office space, and additional office sites, to the State Registry. The upgraded State Registry is expected to generate increased revenues to be used to support itself. A plan to ensure the sustainability of the State Registry will be produced and implemented so that Mongolia will have a secure system for recognizing and protecting real property rights over the long term. In addition, the various institutional reforms that the Property Rights Project should facilitate will make future privatizations easier. Regarding the Peri-Urban Land Leasing Activity, annual land lease payments to the Government are expected to support improved land management, extension and other services needed by the herder groups, and plans will be developed for management and maintenance of wells and other rangeland infrastructure supplied by the Property Rights Project. Related Disbursements will depend upon the prior development, with relevant stakeholder input, of selection criteria for herder groups that are eligible for leases under the Peri-Urban Land Leasing Activity.

In order to ensure the environmental and social sustainability of the Property Rights Project as a whole, MCA-Mongolia will engage in regular public consultations through which various stakeholders (including women and other vulnerable groups) will have the opportunity to participate in the development and implementation of the Property Rights Project. In addition, a framework environmental assessment (that includes a social assessment) and an EMP will be completed prior to the commencement of (a) any upgrade of the various offices under the Improvement of the Land Privatization and Registration System Activity and (b) any construction activity under the Peri-Urban Land Leasing Activity.

D. Vocational Education Project

1. Background

Mongolia's vocational education system has not evolved to serve the demands of a modern, private-sector led economy. The capacity of this system to teach core technical skills and provide critical labor information is weak, training equipment is limited and outdated, and instructors ill-prepared to teach. Essential public-private partnerships to ensure that students receive high quality, demand-driven training are largely absent, and credentialing systems are substandard. As a result, Mongolia imports skilled labor from other markets, leaving high rates of unemployment among unskilled Mongolians, especially youth. The Vocational Education Project is designed to address this problem, specifically seeking to increase the wages of poor Mongolians by improving their technical skills and productivity to meet labor market demand in key industries (including, among others, construction, mining, electronics, mechanics, and transport). This will be done by (a) strengthening the institutional framework needed to support a demand-driven vocational education system, (b) defining industry-led skills training standards for occupations and translate these standards into a modern vocational education curricula supported by new instructional materials and equipment, (c) developing 30 new career preparation tracks, and (d) improving teacher training and professional development.

2. Activities

The Vocational Education Project consists of the following activities (each, a ''*Project Activity*''):

(a) Reforms to TVET Policy and Operational Framework Activity.

MCC Funding will be used to strengthen the policy and operational framework, to create an efficient governance and standard-setting mechanism, and to secure private sector participation for technical and vocational education and training (''*TVET*''). Specifically, MCC Funding will support:

(i) Legal and regulatory reforms that will create and allow the implementation of demand-driven TVET; and

(ii) Establishment and support of the National Advisory Board for Vocational Education and Training (''*NABVET*'') to enable it to respond to labor market needs, to rationalize public funding, to set standards, and to coordinate quality assurance processes and formal course accreditation.

(b) Creation of Skills Standards and Competencies System Activity.

MCC Funding will be used to establish skills standards and a competency-based qualification training system based on nationally approved units of competency, modules and courses, and to install these innovations in training institutes. Specifically, MCC Funding will support:

(i) Establishment of national TVET standards for short-term and long-term career training fields;

(ii) Development of new, modern, curricula, courses, and instructional materials for short-term and long-term career training fields;

(iii) Development of an assessment and credentialing system to support the

new standards and modernized TVET system;

(iv) Improvement of the capacity of regional and national methodology centers to create and distribute materials and training resources to instructors in all types of TVET institutes; and

(v) Strengthening the linkage between in-service and pre-service vocational-technical teacher training programs and improving the sustainability of the TVET teacher training system.

(c) Competency-Based Training System Activity.

MCC Funding will be used to implement the new competency-based training system in TVET schools. Specifically, MCC Funding will support:

(i) Extension of training to approximately 1,500 vocational teachers and administrators in Mongolia's approximately 75 training centers (consisting of approximately 35 Vocational Training and Production Centers under the Ministry of Education, Culture and Science and approximately 40 work development centers under the Ministry of Social Welfare and Labour);

(ii) Provision of equipment and materials needed to deliver the new curriculum being developed for short-term and long-term career training fields as part of the Creation of Skills Standards and Competencies System Activity; and

(iii) Identification and management of environmental, social, health and safety impacts associated with the implementation of this activity, consistent with Section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(d) Career Guidance System Activity.

MCC Funding will be used to provide career guidance and employment information services to Mongolians. Specifically, MCC Funding will support:

(i) Installation of employment information services in eight regional methodological centers; and

(ii) Establishment of a career guidance service and web-based career information system.

3. Beneficiaries

The TVET Project is expected to almost double the enrollment of long-term students in approximately 35 training centers from the current enrollment of approximately 24,700 students to more than 40,000 students. Enrollment in short-term training courses is also expected to significantly increase. The Vocational Education Project is expected to improve the quality of, and to expand access to, TVET. Over the next 20 years, the TVET Project is expected to improve the wage and employment prospects of approximately 170,000 TVET graduates. For these graduates, improved training is anticipated to lead to a starting wage on average 5 percent greater than current starting wages.

4. Donor Coordination; Role of Private Sector and Civil Society

The project will be implemented in coordination with several on-going projects by other donors, including ADB's ''Third Education Development Project'' that seeks, among others, to reform the TVET system, a project funded by the Japan Fund for Poverty Reduction for the promotion of non-formal construction worker skills training for vunerable youth and poor adults, Gesellschaft für Technische Zusammenarbeit's ''Urban Development, Construction Sector and VET Promotion Program,'' as well as its projects on small and medium enterprises promotion.

5. USAID

Currently USAID does not fund projects addressed at reforming the vocational education system. However, the Government will seek future opportunities to collaborate with USAID on vocational education system issues if such funding is made available.

6. Sustainability

To ensure the sustainability of the Vocational Education Project, the Parties have agreed to the policy, legal and regulatory reforms outlined in paragraph 7 below, which are expected to improve TVET institutes' income-generating capacity which, in turn, is expected to lead to increased funding support for TVET institutes. To ensure the environmental and social sustainability of the Vocational Education Project as a whole, the Government shall cause MCA-Mongolia to engage in on-going public consultations with various stakeholders (including women and other vulnerable groups) to participate in the development and implementation of the Vocational Education Project. In addition, MCA-Mongolia will be required to develop a framework EMP, including health and safety guidelines for use in the TVET institutes in the program.

7. Policy, Legal and Regulatory Reforms

(a) Prior to Disbursements for any activity other than the four (4) sub-activities listed below, MCA-Mongolia has developed, satisfactory to MCC, a legal and policy framework to support a modern, labor market driven TVET system, including:

(i) Establishment of NABVET, with half of the members representing, and selected by, the private and non-governmental sectors, and with the other half of the members representing the public sector, as appointed by applicable law;

(ii) Fostering revenue generation and entrepreneurial capacities through, for example, the sale of products and services provided by vocational education institutes;

(iii) Harmonizing all public funding for the TVET sector; and

(iv) Passage of legislation to maintain or increase the level of funding for the TVET sector as of the date the Compact is signed each year during the Compact period.

(b) The Government shall ensure that no TVET institution benefiting from MCC Funding is privatized during the Compact term, either in whole or in part, without MCC's prior written approval of the terms and conditions of such privatization.

E. Health Project

1. Background

Mongolia has rapidly increasing rates of NCDIs, including cardiovascular disease, diabetes, cancers and injury-induced trauma. Mongolia's mortality and morbidity rates from cardiovascular disease and cancers greatly exceed those of Western countries and now represent the major cause of death and disability, particularly in younger age groups (*i.e.*, 35 to 55 years of age). Trauma response and emergency medicine are under-developed. At the same time, current NCDI programs in Mongolia are treatment based, with inadequate attention to cost-effective NCDI prevention, early detection, where relevant, and disease management. This has a negative impact on the productivity of the labor force, which is disproportionately affected by NCDIs, and is a significant drain on scarce public health investments. The Health Project focuses on extending the productive years and productivity of the labor force by reducing the incidence and severity of NCDIs such as cancer, cardiovascular disease, diabetes and preventable accidents and trauma, and reducing and refocusing total health expenditure.

2. Project

The Health Project consists of the following activities (each, a *''Project Activity''*):

(a) NCDI Capacity Building Activity.

MCC Funding will be used to ensure that the program is built on best

international experience with NCDI. Specifically, MCC Funding will support:

(i) Establishment of senior NCDI advisory boards and expert panels;

(ii) Assessment of current NCDI practices, personnel, equipment and supplies, and review of relevant protocols, guidelines, and job descriptions for NCDI detection, management and treatment;

(iii) Competitive selection of the *aimags* and districts where the Health Project will be initially implemented;

(iv) Provision of two mammography machines, vehicles and other NCDI equipment and supplies;

(v) Testing the impact of the Health Project using total quality assurance practices; and

(vi) Finalization of baseline data and indicators for monitoring and evaluation of the Health Project.

(b) NCDI Prevention Activity.

MCC Funding will be used to reduce factors for NCDIs through such behavior change communications as public awareness campaigns and education outreach. Specifically, MCC Funding will support:

(i) Development of national and regional NCDI communications campaigns, such as mass media, health fairs, work sites and mobile units promoting healthy lifestyles; and

(ii) Development and implementation of interventions to promote behavior change among youth and high risk individuals to prevent NCDIs.

(c) NCDI Early Detection Activity.

MCC Funding will be used to mobilize client demand for screening, introduce modern cost-effective procedures, and provide key equipment. Specifically, MCC Funding will support:

(i) Implementation of new NCDI screening procedures in selected sites;

(ii) Improvement of cervical cancer screening methodologies;

(iii) Operations research on feasibility of cervical cancer immunization;

(iv) Improvement of breast cancer detection methodologies; and

(v) Identification and management of environmental, social, health, and safety impacts associated with the implementation of this activity, consistent with section 2.6(c) of the Compact and the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(d) NCDI Management Activity.

MCC Funding will be used to improve the protocols and update training for medical professionals. Specifically, MCC Funding will support:

(i) Development of community-based disease management program and systems; and

(ii) Implementation of new NCDI management services in selected sites.

3. Beneficiaries

The Health Project targets approximately 60 percent of the Mongolian adult population for community-level communications for behavioral change, early detection and disease management activities. This will lead to extended productive years and productivity of the labor force and decreased health expenditures by households on NCDIs in the target population. In addition, the entire population is expected to benefit from changes in school curriculum and mass education campaigns. Specifically, the beneficiaries are expected to include approximately 43 to 45 percent of the adult population nationwide who will have increased access to early detection of hypertension, elevated cardiovascular disease risks, and diabetes risks. Other beneficiaries include the approximately 60 percent of adult women who will have access to early detection of breast and cervical cancer, healthcare professionals in selected counties and districts who will receive specially-designed NCDI training, and secondary school students who will be made aware of health-promoting choices early in life.

4. Donor Coordination; Role of Private Sector and Civil Society

The Health Project will complement the activities of other donors in the health sector, including ADB, Japanese International Corps of Welfare Services and the World Health Organization (''WHO'') that, once having focused on child health and communicable diseases in the past, are increasingly including general support for NCDIs in their programs. Specifically, the Health Project will build upon WHO's laboratory specimen transport system and ADB's physician training, as well as the University of Toronto's research on cervical cancer diagnosis.

While the majority of care within Mongolia for chronic NCDIs (including cancers and cardiovascular diseases) takes place in the public sector, the nascent private sector for health care is growing. For this reason, consultations have taken place with a private hospital association and various physician groups in the design of the Health Project. Civil society's role is expected to be vital as community-level mobilization and motivation for behavioral changes are explored and implemented under the Health Project.

5. USAID

Currently USAID does not fund any health-related projects in Mongolia. However, the Government will seek future opportunities to collaborate with USAID on NCDI issues if health funding is made available.

6. Sustainability

In order to enhance sustainability, the Health Project includes the NCDI Capacity Building Activity from its start-up phase. Since changing attitudes and practices of health providers and managers is a critical component to the Health Project's success, the NCDI Capacity Building Activity is expected to build conviction among the Mongolian medical practitioners and clients of the effectiveness of the new interventions under the Health Project. The Health Project initiates preventive and promotive health services requiring additional funding and recurrent costs (including funding for client medications and procedures for the very poor). The Government will commit to financing these additional costs as further described in paragraph 7 below.

In order to ensure the environmental and social sustainability of the Health Project as a whole, the Government will cause MCA-Mongolia to engage in on-going public consultations in which various stakeholders in the Health Project (including women and other vulnerable groups) are given the opportunity to participate during the implementation of the Health Project. In addition, during the development and implementation of the Health Project, a plan for safe and proper use of diagnostic equipment will be developed and used. A framework EMP will be developed for addressing health and safety issues and for assessing compliance with existing waste management regulations in all project related services and facilities. The EMP will include procedures for support of remedial actions to insure compliance with the MCC Environmental Guidelines, environmental regulations and access needs for all potential beneficiaries.

7. Policy, Legal and Regulatory Reforms

The implementation by the Government of the policy, legal and regulatory reforms described below, satisfactory to MCC, shall be conditions precedent to certain Disbursements.

(a) The Government shall have committed to funding the recurrent costs of the NCDI program following the expiration of the Compact Term.

(b) The Government shall have committed to taking necessary steps to ensure that the recurrent costs for screening and disease management activities for low-income people are covered by the Government following the expiration of the Compact Term.

F. Implementation

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation and fiscal accountability for the use of MCC Funding is summarized below. MCC and the Government shall enter into the Program Implementation Agreement, and any other agreements in furtherance of this Compact, all of which, together with this Compact, shall set out certain rights, responsibilities, duties and other terms relating to the implementation of the Program.

1. MCC

MCC shall take all appropriate actions to carry out each of its responsibilities in connection with this Compact and the Program Implementation Agreement, including the exercise of its approval rights in connection with the implementation of this Compact and the Program.

2. Governance

(a) Establishment of MCA-Mongolia. Under this Compact, the Government hereby establishes an independent legal entity empowered to carry out the Government's obligations and to implement the Program under this Compact and the Program Implementation Agreement (*''MCA-Mongolia''*). The Government shall ensure that MCA-Mongolia take all appropriate actions to implement the Program, including the performance of the rights and responsibilities designated to it by the Government pursuant to this Compact and the Program Implementation Agreement. In addition, operations of MCA-Mongolia shall be subject to any other limitations MCC may require from time to time.

(i) *Board of Directors.* MCA-Mongolia shall be governed by a board of directors (the ''Board'') that will have final decision making authority over the implementation of the Program. The Board shall consist of:

(1) Nine voting members:

(A) Prime Minister, as chairman of the Board;

(B) Minister of Finance;

(C) Minister of Roads, Transportation and Tourism;

(D) Minister of Education, Culture and Science;

(E) Minister of Health;

(F) Minister of Construction and Urban Development;

(G) One representative selected by the private sector;

(H) Two representatives selected by civil society; and

(2) Nine non-voting members:

(A) MCC observer;

(B) MCA-Mongolia chief executive officer;

(C) MCA-Mongolia general counsel;

(D) State Secretary from Ministry of Social Welfare and Labour;

(E) State Secretary from Ministry of Food and Agriculture;

(F) One representative selected from the private sector who will be, after his/her term as non-voting member, the voting member from the private sector; and

(G) Three representatives selected from civil society, of which, one will be an environmental observer and two will become, after their terms as non-voting members, voting members.

(ii) *Technical Secretariat.* A technical secretariat (the *''Technical Secretariat''*) shall support the Board in the implementation of the Program. A chief executive officer will manage the day-to-day activities of MCA-Mongolia and will be supported by: (1) A chief operating officer, (2) a chief financial officer, (3) a general counsel, (4) a procurement officer, (5) an environmental and social assessment officer, (6) a monitoring and evaluation officer, (7) a rail project director, (8) a peri-urban rangeland director, (9) an urban property rights director, (10) a vocational education project director, and (11) a health director, and such other officers as may be agreed upon by the Government and MCC. The officers shall be supported by appropriate administrative personnel.

(iii) *Ethics Disclosures.* All voting members of the Board and the officers of the Technical Secretariat set forth in clause (ii) above shall be required to provide, in advance of assuming their respective positions and annually at such times as are required by Mongolia's Anti-Corruption Law, the financial and other disclosures required by such law. This obligation shall apply whether or not such law would, absent this provision, require such disclosure.

(b) *Designation of MCA-Mongolia.* The Government hereby designates MCA-Mongolia to implement all of the Government's obligations and to exercise all of the rights of the Government under this Compact and the Program Implementation Agreement. The Government acknowledges that such a designation does not relieve the Government of any of its obligations and rights under this Compact and the Program Implementation Agreement, for which the Government retains full responsibility.

(c) *MCA-Mongolia Operations.* The day-to-day operations of MCA-Mongolia shall be governed by MCA-Mongolia's bylaws, certificate of registration and internal regulations, which shall address, among other things, terms and conditions of employment at MCA-Mongolia.

(d) *Nature of MCA-Mongolia.* The Government acknowledges that:

(i) MCA-Mongolia is neither a Mongolian ''government entity'' nor a Mongolian ''non-governmental entity'' under the laws of Mongolia, and, as such, the laws of Mongolia regulating Mongolian government and non-governmental entities do not apply to MCA-Mongolia; and

(ii) as an independent legal entity established by the Government, any and all obligations of MCA-Mongolia in connection with this Compact are binding on the Government and may be carried out by the Government in the furtherance of the Compact.

(e) *Stakeholders' Committee.* The Government shall ensure a stakeholders committee (the ''*Stakeholders' Committee*'') is formed and approved by MCC, to continue the consultative process throughout the implementation of the Program by having the Stakeholders' Committee provide recommendations to the Board and the Technical Secretariat regarding issues, concerns and inputs arising from the implementation of the Program. Private sector members of the Stakeholders' Committee will be selected initially by private sector members of the National Council, and civil society members will be selected initially by the civil society members of the National Council.

(f) *Effectiveness.* This paragraph 2 of Part F of Annex I of the Compact shall be in effect from the date of execution of this Compact by the Parties without regard to the requirements for entry into force provided in Section 7.3 of the Compact.

3. Banking Services, Fiscal Management and Procurement

(a) The Government shall ensure that a bank (the ''*Bank*'') is appointed, and the Permitted Accounts are established and banking services provided, in accordance with the terms of this Compact and the Program Implementation Agreement. The Bank will provide a broad range of banking services required by MCA-Mongolia to implement the Program. The Government shall take all appropriate actions to ensure that the Bank performs these services in accordance with the terms of this Compact, the Program Implementation Agreement and any other agreements to which the Bank is a party. The Government shall set out the roles and responsibilities of the Bank in one or more agreements to be

entered into between MCA-Mongolia and the Bank.

(b) The Government shall ensure that a fiscal agent (the ''*Fiscal Agent*'') is appointed in accordance with the terms of this Compact and the Program Implementation Agreement. The Fiscal Agent will provide a broad range of financial management services required by MCA-Mongolia to implement the Program. The Government shall take all appropriate actions to ensure that the Fiscal Agent performs these services in accordance with the terms of this Compact, the Program Implementation Agreement and any other agreements to which the Fiscal Agent is a party and that all accounting in connection with the Program is in accordance with IAS. The Government shall set out the roles and responsibilities of the Fiscal Agent in one or more agreements to be entered into between MCA-Mongolia and the Fiscal Agent.

(c) The Government shall ensure that a procurement agent (the ''*Procurement Agent*'') is appointed in accordance with the terms of this Compact and the Program Implementation Agreement. The Procurement Agent will provide specified procurement activities required by MCA-Mongolia to implement the Program. The Government shall take all appropriate actions to ensure that the Procurement Agent performs these services in accordance with the terms of this Compact, the Program Implementation Agreement and any other agreements to which the Procurement Agent is a party and in accordance with the MCC Program Procurement Guidelines. The Government shall set out the roles and responsibilities of the Procurement Agent in one or more agreements to be entered into between MCA-Mongolia and the Procurement Agent.

4. Project Implementation

Except as otherwise agreed between the Parties, the Program will be implemented as follows:

(a) Rail Project implementation will be overseen by an outside project management firm.

(b) For the Property Rights Project, the Improvement of the Land Privatization and Registration System Activity and the Privatization & Registration of Ger Area Land Plots Activity will be implemented by a project implementation unit housed within the Ministry of Construction and Urban Development. The Peri-Urban Land Leasing Activity will be implemented by a project implementation unit housed within the Ministry of Food and Agriculture.

(c) The Vocational Education Project will be implemented by a program implementation unit housed within the Ministry of Education, Culture and Science.

(d) The Health Project will be implemented by a program implementation unit housed within the Ministry of Health.

(e) Each relevant project implementation unit housed within a ministry of the Government will function in accordance with the applicable terms of the Program Implementation Agreement. The terms and conditions of employment, including remuneration and grounds for renewal or dismissal, shall be according to the terms of the applicable employment agreements and the labor policies specific to such project implementation unit. The staff of each such project implementation unit will be selected competitively without discrimination based on nationality or gender.

Annex II Summary of Multi-Year Financial Plan

This Annex II to the Compact summarizes the multi-year financial plan for the Program.

1. General

The multi-year financial plan summary below sets forth the estimated annual contribution of MCC Funding for administration, monitoring and evaluation, and implementation of the Program. The Government's contribution of resources will consist of ''in-kind'' and other contributions or amounts required to satisfy effectively the requirements of section 2.5(a) of this Compact. In accordance with the Program Implementation Agreement, the Government shall develop and adopt, on a quarterly basis, a detailed financial plan, approved by MCC, setting forth annual and quarterly funding requirements for the Program, projected both on a commitment and cash requirement basis.

2. Modifications

To preserve flexibility, the Parties may by written agreement (or as otherwise provided in the Program Implementation Agreement), without amending this Compact, change the designations and allocations of funds among the Projects, the Project Activities, or any component under Program administration or monitoring and evaluation, or between a Project identified as of entry into force of the Compact and a new project; provided, however, that any such change (a) is consistent with the Compact Goal, and Project Objectives, and the Program Implementation Agreement, (b) does not materially adversely affect the applicable Project or any component under Program administration or monitoring and evaluation, (c) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1 of this Compact, and (d) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in section 2.5(a) of this Compact.

MULTI-YEAR FINANCIAL PLAN SUMMARY

Project	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Rail Project:							
(a) Rail Sector Technical Assistance Activity	0	7,913,500	4,444,500	2,920,000	2,770,000	1,970,000	20,018,000
(b) LeaseCo Establishment Activity	0	1,010,000	280,000	280,000	290,000	0	1,860,000
(c) LeaseCo Operation Activity	0	16,500,000	38,720,000	48,420,000	57,820,000	810,000	162,270,000
(d) Project Administration Costs (RPM)	0	634,500	1,057,500	1,057,500	1,057,500	423,000	4,230,000
Subtotal	0	26,058,000	44,502,000	52,677,500	61,937,500	3,203,000	188,378,000
2. Property Rights Project:							
(a) Land Registration System Activity	0	1,325,375	4,746,458	3,812,250	2,592,430	223,100	12,699,613
(b) Privatization of Ger Area Land Plots Activity	0	201,250	682,813	625,313	510,314	510,314	2,530,004
(c) Peri-Urban Land Leasing Activity	0	1,092,500	2,406,375	2,285,625	43,125	43,125	5,870,750
(d) Project Administration Costs	172,200	374,100	341,436	352,651	364,259	357,273	1,961,919
Subtotal	172,200	2,993,225	8,177,082	7,075,839	3,510,128	1,133,812	23,062,286
3. Vocational Education Project:							
(a) TVET National Framework Activity	100,000	200,000	200,000	0	0	0	500,000
(b) Industry-Led Skills Standards System Activity	0	500,000	2,500,000	3,000,000	2,000,000	200,000	8,200,000
(c) Competency-Based Training System Activity	0	800,000	5,000,000	5,000,000	3,000,000	500,000	14,300,000
(d) Career Guidance System Activity	0	250,000	300,000	100,000	100,000	100,000	850,000
(e) Project Administration Costs	126,600	343,800	286,998	296,518	306,371	302,569	1,662,856
Subtotal	226,600	2,093,800	8,286,998	8,396,518	5,406,371	1,102,569	25,512,856
4. Health Project:							
(a) NCDI Capacity Building Activity	75,000	325,000	1,900,000	2,300,000	1,000,000	997,000	6,597,000
(b) NCDI Prevention Activity	0	400,000	800,000	1,100,000	1,200,000	1,090,000	4,590,000
(c) NCDI Early Detection Activity	0	500,000	600,000	700,375	258,000	250,000	2,308,375
(d) NCDI Management Activity	0	800,000	900,000	250,000	250,000	173,000	2,373,000
(e) Project Administration Costs	111,500	216,000	201,300	207,821	214,569	207,554	1,158,744
Subtotal	186,500	2,241,000	4,401,300	4,558,196	2,922,569	2,717,554	17,027,119
5. Monitoring and Evaluation:							
Monitoring and Evaluation	40,250	562,350	471,500	469,200	385,250	2,768,050	4,696,600
Subtotal	40,250	562,350	471,500	469,200	385,250	2,768,050	4,696,600
6. Program Administration and Audits:							
(a) Program Administration (MCA–M)	741,133	1,677,533	1,265,720	1,185,579	1,056,132	1,063,405	6,989,502
(b) Fiscal Agent	1,800,000	1,340,000	1,340,000	1,340,000	1,340,000	1,340,000	8,500,000
(c) Procurement Agent	1,700,000	1,300,000	1,300,000	1,200,000	1,000,000	1,000,000	7,500,000
(d) Audit	156,000	234,000	350,000	350,000	350,000	390,000	1,830,000
(e) Environment & Social Oversight Consultant	0	620,000	350,000	245,000	100,000	100,000	1,415,000
Subtotal	4,397,133	5,171,533	4,605,720	4,320,579	3,846,132	3,893,405	26,234,502
Total Estimated MCC Contribution	5,022,683	39,119,908	70,444,600	77,497,832	78,007,950	14,818,390	284,911,363

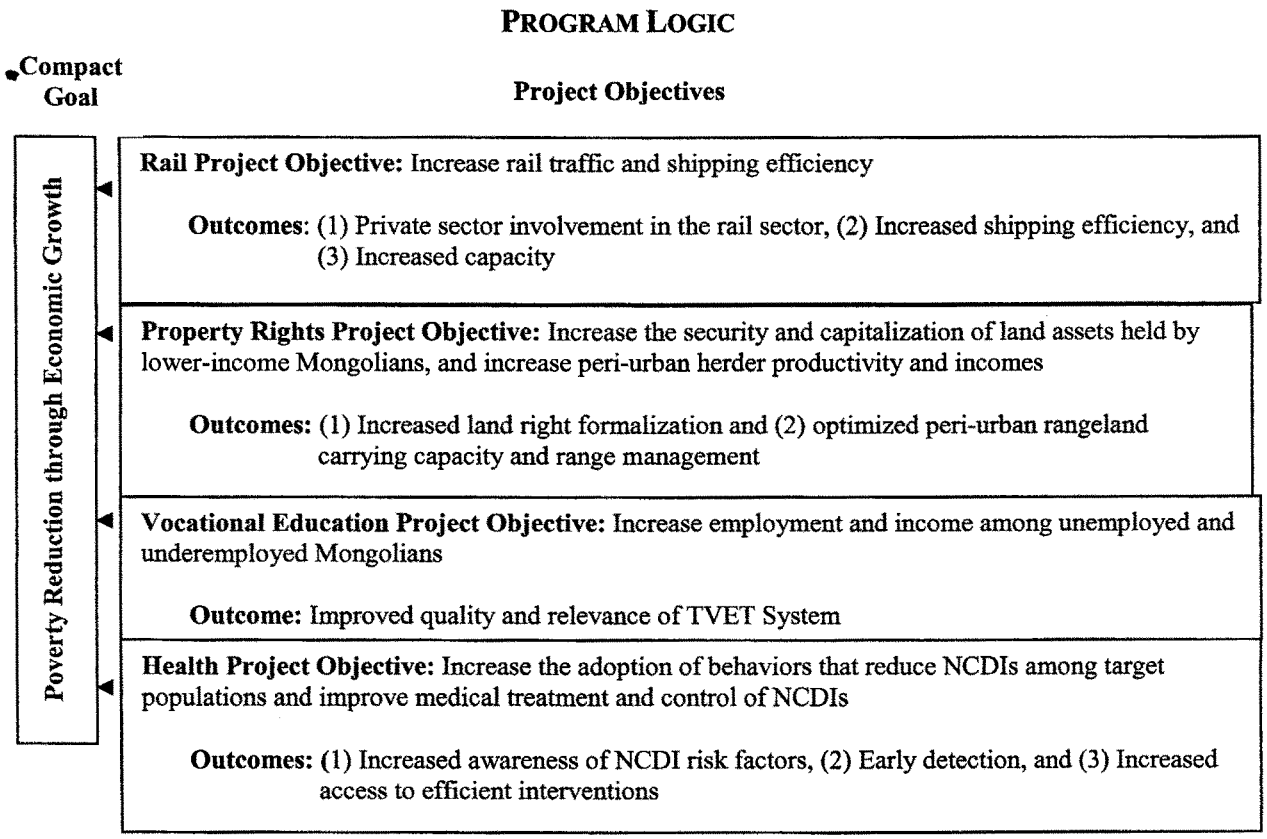
Annex III Summary of Monitoring and Evaluation Plan

This Annex III to the Compact summarizes the components of the plan to measure and evaluate progress toward achievement of the Compact Goal and the Project Objectives (''M&E Plan'').

1. Overview

MCC and the Government shall formulate and agree to, and the Government shall implement or cause to be implemented, the M&E Plan that specifies (a) how progress toward the Compact Goal, Project Objectives and the intermediate results of each Project and Project Activity set forth in this Annex III (''*Outcomes*'') will be monitored (''*Monitoring Component*''), (b) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project Activities to determine their efficiency, effectiveness, impact and sustainability (''*Evaluation Component*'') and (c) other components of the M&E Plan described below.

Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, shall be made publicly available on MCA-Mongolia's Web site and elsewhere. The Compact Goal, Project Objectives and Outcomes can be summarized as follows:



2. Monitoring Component

To monitor the progress toward the achievement of the Compact Goal, Project Objectives and Outcomes, the Monitoring Component of the M&E Plan shall identify (a) the Indicators, (b) the persons responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA-Mongolia, and (c) the method by which the reported data will be validated.

(a) *Indicators.* The M&E Plan shall measure the impacts of the Program using objective and reliable information (''Indicators''). Each Indicator shall have one or more expected values that specify the expected results and time for the impacts to be achieved (''Target''). The M&E Plan shall measure and report on Indicators at four levels. First, the Indicators at the Compact Goal level (''Goal Indicator'') shall measure the impact of the overall Program and each Project. Second, the Indicators at the Project Objectives level (''Objective Indicator'') shall measure the final results of each of the Projects, including impacts on the intended beneficiaries identified in Annex I (collectively, the ''Beneficiaries''). Third, Indicators at the intermediate level (''Outcome Indicator'') shall measure the results achieved under each of the Project Activities and will provide an early measure of the likely impact under each of the Projects. A fourth level of Indicators (''Output Indicator'') shall be included in the M&E Plan to measure the direct outputs of Project Activities. Indicators shall be disaggregated by sex, income level and age, to the extent practicable. Subject to prior written approval from MCC, MCA-Mongolia may add Indicators or modify the Targets of existing Indicators.

GOAL INDICATORS

Indicator	Baseline	Year 5 target	Year 10 target
Increase in GDP due to Program[3]	US$3.19 billion	US$4.63 billion	US$5.97 billion.

GOAL INDICATORS—Continued

Indicator	Baseline	Year 5 target	Year 10 target
Poverty Headcount [4]	19.1%	18.4%	17.5%.

INDICATORS.—RAIL PROJECT

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Creation of new jobs and increased firm profitability.	Increase in GDP due to rail improvements.	Incremental level of GDP due to transport cost savings (2007 US$ millions) [5].	0	62
Increased economic activity via rail network.	Freight turnover (million ton-km)	Freight mass multiplied by distance transported, includes shipping by all rail operators in Mongolia [6].	9,219	22,301
	Mine traffic (thousand metric tons)	Domestic plus export traffic of coal and other minerals.	6,684	16,156
Outcome-level result	**Outcome indicator**	**Definition of indicator**	**Baseline**	**Year 5 target**
Private sector involvement in the rail sector.	Percent of wagons leased by private firms.	Percent of MCC financed wagons leased by private firms.	0	10%
Increased shipping efficiency	Railway operating ratio	Operating Expense / Operating Revenue.	95	87
	Customer satisfaction	Customer satisfaction as determined by survey of rail customers [7].	TBD	TBD
	Wagon time to destination (days)	Number of days from the time a wagon starts loading until the time it starts loading again. This is a monthly average of all operating and operable wagons in the fleet.	5.2	5.0
Increased capacity	Average locomotive availability (%).	Numerator: Locomotives at rail operator's disposal minus locomotives in repair Denominator: Locomotives at rail operator's disposal.	50	76

INDICATORS.—PROPERTY RIGHTS PROJECT

[Improvement of Land Privatization and Registration System Activity & Privatization & Registration of Ger Area Land Plots Activity]

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Increased capitalization of land assets.	Immovable property value of hashaa plots (2007 US$/sq. meter).	Average sales price of hashaa plot per square meter in Ulaanbaatar.	7.28	8.23
		Average sales price of hashaa plot per square meter in target communities outside Ulaanbaatar [8].	2.44	2.62
	Households accessing bank credit	Number of hashaa plot owners in Ulaanbaatar who are using their hashaa plots as collateral [9].	6,400	23,400
Output-level result	**Output indicator**	**Definition of indicator**	**Baseline**	**Year 5 target**
Increased land right formalization	Hashaa plots directly registered by the Property Rights Project.	Cumulative number of hashaa plots registered by contractors of MCA-Mongolia.	0	75,000

INDICATORS.—PROPERTY RIGHTS PROJECT

[Peri-Urban Land Leasing Activity]

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Increased herder household income.	Income of herder households on long-term lease land.	Net income of herder households on long-term lease land measured by total consumption (2007 US$) [10].	US$4,650	US$5,330
Increased peri-urban herder productivity.	Herd mortality rate	Annual mortality rate of cattle	5.6	4.5
	Liters of milk per cow	Annual average liters of milk per cow on semi-intensive project farms.	260	1,050
		Annual average liters of milk per cow on intensive project farms.	260	1,950
Outcome-level result	**Outcome indicator**	**Definition of indicator**	**Baseline**	**Year 5 target**
Optimize peri-urban rangeland carry capacity and range management.	Number of herder groups adopting intensive farm management techniques.	Number of settlements meeting the following criteria: (i) sheep units per 100 ha of pasture is +/−20% of recommended carrying capacity for intensive farm, (ii) livestock is predominately (75%+) cows, and (iii) hay stored at beginning of winter season is at least 180 days of dairy herd requirement.	0	40
	Number of herder groups adopting semi-intensive farm management techniques.	Number of settlements meeting the following criteria: (i) sheep units per 100 ha of pasture is +/−20% of recommended carrying capacity for semi-intensive farm, and (ii) hay stored at beginning of winter season is at least 30 days of dairy herd requirement.	0	260

INDICATORS.—VOCATIONAL EDUCATION PROJECT

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Increased Income	Annual salary (2007 US$)	Average annual salary of employed graduates who completed new curriculum one year after graduation (targets are percent increase over Year 3 level when a new baseline will be taken) [11].	1,237	+5%
Increased Employment	Rate of employment	Employment rate of graduates who completed new curriculum one year after graduation (targets are percent increase over Year 3 level when a new baseline will be taken) [12].	71%	+2%
Outcome-level result	**Outcome indicator**	**Definition of indicator**	**Baseline**	**Year 5 target**
Improved quality and relevancy of TVET system.	Non-governmental funding of vocational education.	Percentage of non-governmental funding out of all funding for the Ministry of Education, Culture and Science and the Ministry of Social Welfare and Labour vocational education institutions.	1%	12%
	Students completing newly designed long-term programs.	Number of students who successfully receive certification from newly designed long-term programs (annual).	0	10,600
	Certified vocational education teachers.	Percent of total teaching staff which has successfully completed the certification exam.	0%	80%

INDICATORS.—VOCATIONAL EDUCATION PROJECT—Continued

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Outcome-level result	Outcome indicator	Definition of indicator	Baseline	Year 5 target
Improved quality and relevance of TVET system.	Percent of active teachers receiving certification training.	Percent of active teachers receiving certification training regardless of pass/fail status.	0%	100%

INDICATORS.—HEALTH PROJECT [13]

Objective-level result	Objective indicator	Definition of indicator	Baseline	Year 5 target
Increased control and prevention of NCDIs.	Diabetes and hypertension controlled.	Percentage of people who, through a combination of diet, exercise and medication, successfully control disease out of population with disease.	24.4%	44.4%
	Cervical cancer prevention	Percent of women diagnosed with pre-cancerous legions who are appropriately treated [14].	0%	80%
Outcome-level result	Outcome indicator	Definition of indicator	Baseline	Year 5 target
Early detection	Percentage of cancer cases diagnosed in early stages.	Percentage of cervical and breast cancer cases diagnosed in first or second stage.	28%	48%
	Percent of those with known diagnosis of hypertension/diabetes out of all actual cases in adult population.	Numerator: Number of those previously diagnosed with disease. Denominator: Number with disease as determined by biometric/biochemical portion of STEP Survey.	43%	59%
Increased access to efficient interventions.	Screened for breast and cervical cancer.	Number of women 35 to 40 who have ever received a comprehensive preventative health check-up including a clinical breast exam and visual cervical exam [15].	TBD	39,000
	Counseling for diabetes and hypertension.	Percent of patients diagnosed with elevated blood pressure and/or blood sugar who receive proper counseling [16].	63%	95%

The M&E Plan will also include specific indicators demonstrating knowledge, attitudes, and practice regarding NCDI risk factor reduction among target demographics. These indicators will capture the Outcome of ''Increased Awareness of NCDIs.'' These indicators will be determined before Year 2 as studies on the best intervention strategies are concluded.

(b) *Data Collection and Reporting.* The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible persons. The Technical Secretariat of

[3] Measured by total annual GDP. Units are 2007 USD converted at market rate.

[4] Baseline is computed a 1 US$ per day poverty line assuming total income from the 2003/03 HIES–LSMS as the welfare aggregate. The baseline and targets may be recalibrated in consultation with MCA-Mongolia using consumption as the welfare aggregate.

[5] For reporting, total GDP will suffice to monitor this indicator. Incremental GDP requires establishing a counterfactual which would require numerous assumptions and detailed modeling; this task may be included in the final evaluation.

[6] As of 2007, the only rail operator was UBTZ; however, it is possible for other rail operators to emerge in the future.

[7] A customer satisfaction survey will be carried out under the Compact.

[8] Average figure of 2.44 US$/sq meter represents 4 out of 8 non-Ulaanbaatar communities; the baseline will be completed under the Compact.

[9] Baseline of 6,400 owners currently using their plots as collateral will be substantiated and possibly revised during Year 1 of the Compact. If the baseline is revised, the target will be modified proportionally.

[10] Net of livestock-related expenses, land leasing payments, and debt service. Baseline of US$4,650 will be substantiated and revised if necessary during the Compact. If the baseline is revised, the target will be modified proportionally.

[11] Target is a weighted average for all students. Wages are expected to increase by 9% and 3% for employed graduates of regional methodological centers and other VTE schools respectively.

[12] Target is a weighted average for all students. Employment is expected to increase by 5% and 1% for graduates of regional methodological centers and other VTE schools respectively.

[13] All figures refer to the population within the areas targeted by the project, 60% of the country. The M&E Plan will disaggregate figures by breast cancer, cervical cancer, hypertension, and diabetes for the respective indicators. The figures presented here are the average of the two diseases (breast with cervical cancer and hypertension with diabetes).

[14] In 2006, there were 17 women treated for breast cancer and 113 treated for cervical cancer (113 treated). These are national figures; the M&E Plan may choose to track figures specific to the target regions.

[15] The baseline for screening for breast and cervical cancer will be determined during Year 1 of the Compact.

[16] The figures presented here are based on successfully controlled cases according to the STEP survey 2006. The M&E Plan may use facility based data instead of the STEP survey in which case the baseline will be modified to reflect the change in data source.

MCA-Mongolia shall conduct regular assessments of Program performance to inform the Board of MCA-Mongolia and MCC of progress under the Program and to alert them of any problems. These assessments shall report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. MCA-Mongolia shall deliver any data or reports received by MCA-Mongolia promptly to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC.

(c) *Data Quality Reviews.* As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as reliable, timely and valid as resources allow. The objective of any data quality review shall be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews shall also serve to identify where consistent levels of quality are not possible, given in-country capacity or other constraints. MCA-Mongolia shall enter into an agreement, in a form acceptable to MCC, with the reviewer to fulfill the provisions set forth in paragraph 1 of this Annex III and this clause (c).

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component of the M&E Plan shall contain a methodology, process and timeline for collecting and analyzing data in order to assess planned, ongoing, or completed Project activities to determine their efficiency, effectiveness, impact and sustainability. The evaluations should use state-of-the-art methods for addressing selection bias. The Government shall implement, or cause to be implemented, surveys to collect longitudinal data on both Beneficiary and non-Beneficiary households. The Evaluation Component shall contain plans for Final Evaluations and Ad Hoc Evaluations, and shall be finalized before any Disbursement for specific Project activities or the Program.

(a) *Final Evaluation.* MCA-Mongolia shall engage an independent evaluator to conduct an evaluation of the Program at the expiration or termination of the Program (''Final Evaluation''). The evaluation methodology, timeline, data collection, and analysis requirements shall be finalized and detailed in the M&E Plan. The Final Evaluations shall at a minimum (i) estimate quantitatively and in a statistically valid way, the causal relationship between the Compact Goals (to the extent possible), the Project Objectives and Outcomes; (ii) determine if and analyze the reasons why the Compact Goals, Project Objectives and Outcomes were or were not achieved; and (iii) assess the overlapping benefits of the Projects.

(b) *Ad Hoc Evaluations or Special Studies.* Either MCC or MCA-Mongolia may request ad hoc or interim evaluations or special studies of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term (each, an ''Ad Hoc Evaluation''). If MCA-Mongolia engages an evaluator for an Ad Hoc Evaluation, the evaluator shall be an externally contracted independent source selected by MCA-Mongolia, subject to the prior written approval of MCC, following a tender in accordance with the MCC Program Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter, the Program Implementation Agreement or any other related agreement or arrangement. If MCA-Mongolia requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or seeking funding from other donors, no MCC Funding or MCA-Mongolia resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring Components and the Evaluation Components, the M&E Plan shall include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) *Costs.* A detailed annual budget estimate for all components of the M&E Plan.

(b) *Assumptions and Risks.* Any assumptions and risks external to the Program that underlie the accomplishment of the Project Objectives and Outcomes; provided that such assumptions and risks will not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) *Approval and Implementation.* The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with the Annex I, this Annex III, the Program Implementation Agreement and any other related agreement or arrangement.

(b) *Stakeholders' Committee.* The completed portions of the M&E Plan shall be presented to the Stakeholders' Committee at its initial meeting, and any amendments or modifications to and any additional components of the M&E Plan shall be presented to the Stakeholders' Committee at its appropriate subsequent meetings. The Stakeholders' Committee shall have the opportunity to present its suggestions to the M&E Plan, which the Board of MCA-Mongolia will take into consideration in its review of any amendments to the M&E Plan during the Compact Term.

(c) *Disbursement Conditions.* A condition to each Disbursement shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements. In addition, for certain activities, collection of baseline data may be a condition precedent for specified Disbursements.

(d) *Modifications.* Notwithstanding anything to the contrary contained in this Compact, including the requirements of this Annex III, the Parties may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending this Compact; provided, however, that any such modification or amendment of the M&E Plan shall be reviewed by the Stakeholders' Committee and has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact, the Project Objectives, the Program Implementation Agreement and any other related agreement or arrangement.

Annex IV Definitions

Ad Hoc Evaluation has the meaning provided in paragraph 3(b) of Annex III.

ADB means the Asian Development Bank.

Audit Guidelines has the meaning provided in section 3.8(a).

Bank has the meaning provided in paragraph 3(a) of Part F of Annex I.

Beneficiaries has the meaning provided in paragraph 2(a) of Annex I.

Board has the meaning provided in paragraph 2(a)(i) of Part F of Annex I.

Compact has the meaning provided in the Preamble.

Compact Goal has the meaning provided in section 1.1.

Compact Implementation Funding has the meaning provided in section 2.2(a).

Compact Records has the meaning provided in section 3.7(a).

Compact Term has the meaning provided in section 7.4.

Covered Provider has the meaning provided in section 3.7(c).

Disbursement has the meaning provided in section 2.3.

EMP means an environmental management plan.

Evaluation Component has the meaning provided in paragraph 1 of Annex III.

Final Evaluation has the meaning provided in paragraph 3(a) of Annex III.

Fiscal Agent has the meaning provided in paragraph 3(b) of Part F of Annex I.

Goal Indicator has the meaning provided in paragraph 2(a) of Annex III.

Government has the meaning provided in the Preamble.

Health Project mean the Project described in Part E of Annex I.

IAS means the standards issued by the International Accounting Standards Board and include International Accounting Standards, International Financial Reporting Standards and interpretations of each.

Implementation Letter has the meaning provided in section 3.5.

Indicators has the meaning provided in paragraph 2(a) of Annex III.

Inspector General has the meaning provided in section 3.8(a).

LeaseCo has the meaning provided in paragraph 2(b) of Part B of Annex I.

LeaseCo Assets has the meaning provided in paragraph 2(c)(i) of Part B of Annex I.

M&E Plan has the meaning provided in Annex III.

MCA-Mongolia has the meaning provided in paragraph 2(a) of Part F of Annex I.

MCC has the meaning provided in the Preamble.

MCC Environmental Guidelines has the meaning provided in section 2.6(c).

MCC Funding has the meaning provided in section 2.1.

MCC Indemnified Party has the meaning provided in section 6.7.

MCC Program Procurement Guidelines has the meaning provided in section 3.6.

MCC Website has the meaning provided in section 2.6.

Monitoring Component has the meaning provided in paragraph 1 of Annex III.

MRA has the meaning provided in paragraph 2(a) of Part B of Annex I.

NABVET has the meaning provided in paragraph 2(a)(ii) of Part D of Annex I.

National Council means the MCA National Council that was established by the Government, with high-level representation from the Government, civil society and the private sector to develop a proposal for MCC assistance to Mongolia.

NCDI has the meaning provided in section 1.2(d).

Objective Indicator has the meaning provided in paragraph 2(a) of Annex III.

OpCo has the meaning provided in paragraph 2(b)(iii) of Part B Annex I.

Outcome Indicator has the meaning provided in paragraph 2(a) of Annex III.

Outcomes has the meaning provided in paragraph 1 of Annex III.

Output Indicator has the meaning provided in paragraph 2(a) of Annex III.

Parties has the meaning provided in the Preamble.

Permitted Account has the meaning provided in section 2.3.

Principal Representative has the meaning provided in section 4.2.

Procurement Agent has the meaning provided in paragraph 3(c) of Part F of Annex I.

Program has the meaning provided in the Preamble.

Program Implementation Agreement has the meaning provided in section 3.1.

Project has the meaning provided in paragraph 2 of Part A of Annex I.

Project Activity means the various activities to be undertaken in the implementation of particular Projects, including:

- With respect to the Rail Project, the:
  - Rail Sector Technical Assistance Activity,
  - LeaseCo Establishment Activity, and
  - LeaseCo Operation Activity;
- With respect to the Property Rights Project, the:
  - Improvement of the Land Privatization and Registration System Activity,
  - Privatization & Registration of Ger Area Land Plots Activity, and
  - Peri-Urban Land Leasing Activity;
- With respect to the Vocational Education Project, the:
  - Reforms to TVET Policy and Operational Framework Activity,
  - Creation of Skills Standards and Competencies System Activity,
  - Competency-Based Training System Activity, and
  - Career Guidance System Activity; and
- With respect to the Health Project, the:
  - NCDI Capacity Building Activity,
  - NCDI Prevention Activity,
  - NCDI Early Detection Activity, and
  - NCDI Management Activity.

Project Objective has the meaning provided in section 1.2.

Property Rights Project mean the Project described in Part C of Annex I.

Provider has the meaning provided in section 3.7(c).

Rail Project mean the Project described in Part B of Annex I.

Stakeholders' Committee has the meaning provided in paragraph 2(e) of Part F of Annex I.

Target has the meaning provided in paragraph 2(a) of Annex III.

Taxes has the meaning provided in Section 2.7(a).

Technical Secretariat has the meaning provided in paragraph 2(a)(ii) of Part F of Annex I.

TVET has the meaning provided in paragraph 2(a) of Part D of Annex I.

UBTZ has the meaning provided in paragraph 1 of Part B of Annex I.

Vocational Education Project mean the Project described in Part D of Annex I.

WHO has the meaning provided in paragraph 4 of Part E of Annex I.

[FR Doc. E7–21306 Filed 10–29–07; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 3, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 837–2861, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union

Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0101.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 C.F.R. parts 723.5—Develop written loan policies—and 723.11—Provide waiver requests.

Description: The general purpose of the requirements imposed by the rule is to ensure that loans are made, documented, and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund. Respondents are federally insured credit unions who make business loans as defined in the regulation.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 1,662.

Estimated Burden hours per Response: 4 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 6648 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on October 24, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–21273 Filed 10–29–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

Time and Date: 9:30 a.m., Thursday, November 8, 2007.

Place: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

5299Z Most Wanted Transportation Safety Improvements—November 2007 Progress Report and Update on Federal Issues.

NEWS MEDIA CONTACT: Telephone: (202) 316–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, November 2, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov*.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: October 26, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–5411 Filed 10–26–07; 1:33 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DPR–37, issued to the Virginia Electric and Power Company (Dominion, the licensee), for operation of the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

The proposed amendment would allow use of an alternate methodology from that previously approved in Topical Report DOM–NAF–3–0.0–P–A, *GOTHIC Methodology for Analyzing the Response to Postulated Pipe Ruptures Inside Containment*, as discussed in the Surry Power Station, Unit Nos. 1 and 2, Updated Final Safety Analysis Report (UFSAR). The approved methodology was used to establish boundary conditions (i.e., pressure, liquid temperature and water level) for the Surry recirculation spray (RS) strainers being installed in the Surry Units 1 and 2 containment buildings. The boundary conditions are required to assess the RS strainer internal hydraulic performance following a loss-of-coolant accident (LOCA). The NRC-approved methodology contains significant conservatisms, which are included in the GOTHIC net positive suction head (NPSH) available models to maximize liquid temperatures and minimize containment pressure for design-basis containment response evaluations. However, these conservatisms are creating bulk conditions that are too conservative for application to the sump strainer performance. Specifically, for certain LOCA analyses, the overly conservative conditions result in a prediction of two-phase flow in the RS strainer for a short period of time. Therefore, an alternate containment GOTHIC analysis methodology is proposed to reduce certain overly conservative assumptions to more realistically, yet conservatively, address expected plant conditions in containment following a LOCA. The alternate method relaxes some of the conservatisms in the NPSH analysis methodology in Topical Report DOM–NAF–3.0–0–P–A. The proposed alternate methodology will be used to demonstrate that the RS pumps have adequate NPSH available throughout their required service time.

The licensee had performed calculations following an NRC audit at the licensee's North Anna Power Station during the week of July 16, 2007, where an NRC auditor requested documentation of the subcooling margin inside of the containment sump strainers. During review of the calculations, it was identified that dynamic head change in the strainer had not been included in the calculation. Following a new calculation by the strainer vendor, which showed that flashing would not occur at North Anna, a new Surry calculation was performed which showed that flashing would occur under certain conditions that would result in the RS pumps having inadequate NPSH when four RS pumps were in operation at the same time. The approved GOTHIC containment analysis methodology for deriving NPSH was reviewed to determine whether the predicted flashing was reasonable. After several weeks of reviewing the GOTHIC model and its associated conservative inputs and assumptions, it was concluded that an alternate GOTHIC methodology was required to demonstrate that flashing would not occur. The proposed alternate methodology allows for a larger liquid-vapor interface area that accounts for additional heat transfer between the containment vapor and the liquid phase which is not credited in the existing methodology. The 10 CFR 50.59 review completed for the design change package for installation of the Unit 1 sump strainer during the current refueling outage indicated that NRC approval would be required before the strainer was declared operable and before the Surry Unit 1 startup could commence following the refueling. The corresponding operability of the partially installed Surry Unit 2 strainer was addressed in accordance with the licensee's operability determination process. These determinations were completed and discussed with NRC staff on October 16, 2007. Consequently, the specific need for the Surry specific GOTHIC containment analysis

methodology was only recently recognized as requiring NRC approval.

Based on the preceding discussion, the Commission concludes that exigent circumstances exist.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment not involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not adversely affect accident initiators or precursors and does not implement any physical changes to the facility or changes in plant operation. The proposed change does not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, rather it confirms that required SSCs [e.g., the containment sump strainers and the Recirculation Spray (RS) pumps] will perform their function as required. The Updated Final Safety Analysis Report (UFSAR) safety analysis acceptance criteria continue to be met for the proposed change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not impact plant equipment design or function during accident conditions. The hydraulic performance of the GSI–191 strainers is analytically confirmed to be acceptable by using the alternate methodology proposed by this change. No changes in the methods governing normal plant operation are being implemented. The proposed change assures that there is adequate margin available to meet safety analysis criteria and does not introduce new failure modes, accident initiators, or equipment malfunctions that would cause a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined, and the dose analysis acceptance criteria are not affected. The proposed change does not result in plant operation in a configuration outside of the analyses or design basis and does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. The proposed alternate GOTHIC methodology recovers a small amount of conservatism; however, the analyses to determine the sump strainer boundary conditions retain a sufficient level of conservatism and demonstrate that safety related components will continue to be able to perform their design functions. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below. A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer(tm) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance

available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this exigent license application, see the application for amendment dated October 22, 2007, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of October 2007.

For The Nuclear Regulatory Commission.

R. A. Jervey,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–21425 Filed 10–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of October 29, November 5, 12, 19, 26, December 3, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 29, 2007

Friday, November 2, 2007

1:30 p.m. Affirmation Session (Public Meeting) (Tentative). a. Final Rule to Amend 10 CFR Pts. 19, 20, and 50: Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent (RIN 3150–AH40). (Tentative)

Week of November 5, 2007—Tentative

There are no meetings scheduled for the Week of November 5, 2007.

Week of November 12, 2007—Tentative

Wednesday, November 14, 2007

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste and Materials (ACNW&M) (Public Meeting) (Contact: Antonio Dias, 301 415–6805).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of November 19, 2007—Tentative

There are no meetings scheduled for the Week of November 19, 2007.

Week of November 26, 2007—Tentative

Tuesday, November 27, 2007

9:30 a.m. Discussion of Security Issues (closed—ex. 1 & 3).

1:30 p.m. Briefing on Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Sandra Talley, 301 415–8059).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of December 3, 2007—Tentative

Tuesday, December 4, 2007

9:30 a.m. Briefing on Threat Environment Assessment (closed—ex. 1).

Friday, December 7, 2007

10 a.m. Discussion of Intragovernmental Issues (closed—ex. 1 & 9).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 25, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–5403 Filed 10–26–07; 11:50 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS350]

WTO Dispute Settlement Proceeding Regarding Measures Related to Zeroing and Certain Investigations, Administrative Reviews and Sunset Reviews Involving Products From the European Communities; Notice of Opportunity To View Non-Confidential Session of Dispute Settlement Panel's First Meeting With the Parties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that members of the public have an opportunity to view the non-confidential session of the substantive meetings of the Panel in the World Trade Organization (''WTO'') dispute *United States—Continued Existence and Application of Zeroing Methodology* (WT/DS350). Further information about the dispute is available on the USTR Web site (including copies of the submissions filed by the United States at *http://www.ustr.gov/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Dispute_Settlement_Index_-_Pending.html*) and on the WTO Web site at *http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds350_e.htm.* The first meeting is scheduled to begin on November 27, 2007 and the second meeting is scheduled to begin on February 26, 2008. At each session, parties will make their opening statement and may pose questions or make comments on the other party's statement. The Panel may pose any questions or make any comments during the session. The questions and comments will not include, or refer to, business confidential information (''BCI''). To the extent that the Panel or either of the parties considers it necessary, after the public session, the Panel will proceed to a confidential session during which the parties will be allowed to make additional statements or comments and pose questions that involve BCI. Each non-confidential session will be shown via a real-time closed-circuit television broadcast to a separate viewing room. The public viewing will be held at the World Trade Organization, Centre William Rappard, Rue de Lausanne 154, CH–1211 Geneva 21, Switzerland.

USTR invites any person interested in viewing the non-confidential session to so inform USTR by e-mail at *rsvp-DS350@ustr.eop.gov*. USTR urges that the request be made as soon as possible and in any event no later than November 16, 2007 for the first meeting and February 13, 2008 for the second meeting. Requests will be forwarded to the WTO. Each request should indicate the person's full name, contact information (full address, phone, and e-mail), organization (if any), and nationality, and whether the person has made any other request to view the session (such as a request directly to the WTO or to the other party to the dispute, the European Communities).

FOR FURTHER INFORMATION CONTACT: Ronald J. Baumgarten, Jr., Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9583.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–21331 Filed 10–29–07; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 206(4)–7, SEC File No. 270–523, OMB Control No. 3235–0585.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Investment Advisers Act rule 206(4)–7 (17 CFR 275.206(4)–7), Compliance procedures and practices.'' Rule 206(4)–7 requires each investment adviser registered with the Commission to (i) adopt and implement internal compliance policies and procedures, (ii) review those policies and procedures annually, (iii) designate a chief compliance officer, and (iv) maintain certain compliance records. The rule is designed to protect investors by fostering better compliance with the securities laws. The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. The information collected under this rule may also assist Commission staff in assessing investment advisers' compliance programs.

This collection of information is mandatory. The information collected pursuant to the rule 206(4)–7 is reviewed by the Commission's examination staff. It will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents are investment advisers registered with the Commission. Our latest data indicate that there were 10,817 advisers registered with the Commission as of September 30, 2007. The Commission has estimated that compliance with rule 206(4)–7 imposes a burden of approximately 80 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 865,360 hours for this documentation of information.

Written comments are invited on: (a) Whether the documentation 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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–21282 Filed 10–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–3 (17 CFR 275.206(4)–3), which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 2,163 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 15,228 total burden hours ($7.04 \times 2{,}163$) for all advisers.

Written 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 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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–21283 Filed 10–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56694; File No. SR–ISE–2007–61]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Specific Performance Commitments for Primary Market Makers

October 24, 2007.

On July 17, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 802(b)(2) regarding specific performance commitments for Primary Market Makers (''PMMs''). On September 10, 2007, ISE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 19, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposal

Currently, ISE Rule 802(b)(2) requires PMMs to submit specific performance commitments each time they request an allocation of options on indices, foreign currency options and Fund Shares (collectively, ''Index-Based Products''). The initial rationale behind adopting a requirement on PMMs to submit proposed performance commitments for allocations of options on new Index-Based Products was to require a stronger commitment for certain competitive products like exchange-traded funds and indices and to assist the Exchange's Allocation Committee when choosing between PMMs seeking the same product.

The Exchange now believes that its rule is overbroad and may actually discourage some PMMs from seeking allocations of options on Index-Based Products. Therefore, ISE is proposing to amend the rule to provide that specific performance commitments need only be submitted in response to a request by the Exchange, thereby eliminating their submission as a uniform requirement each time a PMM seeks a new allocation of options in Index-Based Products.[4]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed amendment of ISE Rule 802(b)(2) will encourage PMMs to seek allocations of products on the Exchange, and thereby remove impediments to and perfect the mechanism for a free and open market. Further, the Exchange will continue to evaluate performance standards of its market makers pursuant to existing practice. The proposed rule also allows the Exchange to require the submission of specific performance commitments from a PMM seeking a new allocation as the Exchange in its discretion deems appropriate. Accordingly, the Commission finds that the proposal promotes just and equitable principles of trade and protects investors and the public interest.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ISE–Phlx–2007–61), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21285 Filed 10–29–07; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56383 (September 11, 2007), 72 FR 53612.

[4] ISE notes that modifying this requirement will not affect a PMM's other obligations as a market maker on the Exchange under Chapter 8 of ISE's Rules.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56697; File No. SR–NYSE–2007–90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Charged to Member Organizations for Participation in the Exchange's Continuing Education Program

October 24, 2007.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2007, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by NYSE. The Exchange has designated the proposed rule change as establishing or changing a due, fee, or other charge applicable only to members, pursuant to section (b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On October 19, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] 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

NYSE proposes to amend, effective October 1, 2007, the fees charged for the Continuing Education Program for Active Floor Members from a $100 semi-annual participation fee, plus an additional $100 fee to re-register for additional sessions, to a flat $50 fee per training module. The text of the proposed rule change is available on NYSE's Web site at *http://www.nyse.com,* at NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(f)(2).

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, the Exchange made clarifying, non-substantive changes to the filing.

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. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend, effective October 1, 2007, the fees charged for the Continuing Education Program for Active Floor Members from a $100 semi-annual participation fee, plus an additional $100 fee to re-register for additional sessions, to a flat $50 fee per training module. The Exchange is proposing this change to reflect the changes being implemented in the delivery of such program.

As required by NYSE Rule 103A, the Exchange provides Floor members with a mandatory continuing education program, known as the Floor Member Continuing Education Program (''FMCE Program''). The Exchange has been offering the FMCE Program in two training sessions per year. Members could complete such training at an on-site computer training laboratory only. As set forth in the current Price List, members were charged for each time they visited the lab to take a session of FMCE training. Accordingly, the minimum fees charged to members for such training was $200 per year, but could increase in $100 increments if a member was unable to complete a session in a single visit.

Beginning in October 2007, the Exchange will be offering the FMCE Program via a web-based interactive program that members can access from an Internet-capable computer.[6] Because of the web-based nature of this delivery method, members will no longer need to visit an on-site laboratory to complete their FMCE Program requirements. Accordingly, the current billing structure, which is based on when a member visits the on-site laboratory, is no longer applicable.

To reflect the delivery method of the revised, web-based FMCE Program, the Exchange proposes charging members a flat $50 fee for each training module offered. The Exchange anticipates issuing approximately six training modules per year. This number may vary depending on changes in rules and regulations that may warrant either more or less training per year.[7]

For this flat fee, members will have the capability to access the FMCE Program during their own time and from their own computers. Unlike the prior delivery method, members will also be able to stop and start a training module at any point and return to a module once completed without any additional charge. In addition, the Exchange is providing member organization compliance officers with access to the FMCE Program at no charge to the firms so that compliance officers may monitor their members' compliance with the FMCE Program. Again, this is a benefit that was not previously available to firms under the prior FMCE Program delivery method.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the provisions of section 6[8] of the Act in general and section 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)(ii)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by NYSE, applicable only to members. 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–NYSE–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–NYSE–2007–90. 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

[6] A number of factors impact the actual launch of the web-based FMCE Program, however, NYSE Regulation anticipates going live with the program sometime in October. In anticipation of the launch of the redesigned FMCE Program, NYSE closed its on-site laboratory. Accordingly, there is no possibility that pending the launch of the web-based program, a member will be charged under the prior pricing scheme. NYSE is filing this fee amendment in advance of the launch to ensure that the fee structure for the new, web-based program is in effect as of the first date that the new FMCE Program is available to members.

[7] In addition to this fee filing, NYSE is submitting a proposed rule change to amend NYSE Rule 103A to reflect the administrative changes to the delivery of the FMCE program.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

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–NYSE–2007–90 and should be submitted on or before November 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21284 Filed 10–29–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56695; File No. SR–NYSEArca–2007–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Shares of the HealthShares™ Ophthalmology Exchange-Traded Fund

October 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 October 19, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange (''Exchange Proposal''). This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the HealthShares™ Ophthalmology Exchange-Traded Fund (the ''Fund'').[3] The text of the proposal is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares of the Fund (the ''Shares''), which is based on the HealthShares™ Ophthalmology Index (the ''Underlying Index''), under NYSE Arca Equities Rule 5.2(j)(3). NYSE Arca Equities Rule 5.2(j)(3) states that the Exchange may consider for trading, whether by listing or pursuant to unlisted trading privileges (''UTP''), Investment Company Units.[4] The Fund is currently listed on the New York Stock Exchange LLC (''NYSE'') and trades on NYSE Arca pursuant to UTP.[5] HealthShares, Inc. (the ''Corporation'') has determined to transfer the listing of the Fund Shares to the Exchange.[6]

The Fund, which can invest in both U.S. securities and non-U.S. securities not listed on a national securities exchange, seeks to track the performance, before fees and expenses, of the Underlying Index. XShares Advisors, LLC, the investment adviser to the Fund (''Advisor''), uses a passive, or indexing, approach in managing the Fund, investing at least 90% of its assets in the common stocks of Ophthalmology companies in the Underlying Index, or in American Depositary Receipts (''ADRs'') or Global Depositary Receipts (''GDRs'') based on securities of international Ophthalmology companies in the Underlying Index. The Fund may also invest up to 10% of its assets in futures contracts, options on futures contracts, options, swaps on securities of companies in the Underlying Index, as well as cash and cash equivalents, such as money market instruments (subject to applicable limitations of the 1940 Act). The Fund attempts to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities' weightings in the Underlying Index.[7] In managing the Fund, the Advisor seeks a correlation of 0.95 or better between the Fund's performance and the performance of its Underlying Index. A figure of 1.00 would mean perfect correlation.

Detailed descriptions of the Fund, the Underlying Index (including the methodology used to determine the composition of the Underlying Index), procedures and payment requirements for creating and redeeming Shares,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Fund is registered under the Investment Company Act of 1940 (the ''1940 Act'').

[4] NYSE Arca Equities Rule 5.2(j)(3) defines an Investment Company Unit as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

[5] The Exchange states that the Fund Shares were listed on NYSE on March 12, 2007 pursuant to the ''generic'' listing criteria contained in Section 703.16(C) of the NYSE Listed Company Manual, which permits the listing of Investment Company Units pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)). NYSE Arca further represents that the Fund Shares commenced trading on the Exchange pursuant to UTP under the generic listing criteria contained in NYSE Arca Equities Rule 5.2(j)(3) applicable to Investment Company Units and Rule 19b–4(e) under the Act on the first day the Fund Shares launched for trading on NYSE. E-mail from Tim Malinowski, Director, Exchange Traded Funds, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated October 23, 2007 (''Exchange Confirmation'').

[6] The Exchange represents that, except for Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Fund Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3). *See* Exchange Confirmation. Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that component stocks that, in the aggregate, account for at least 90% of the weight of the Underlying Index or portfolio, must each have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. The Exchange states that, as of October 1, 2007, those component stocks comprising the Underlying Index that individually exceed the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months account, in the aggregate, for only 88.2 % of the weight of the Underlying Index (*i.e.*, 1.8% below the required 90% requirement). Therefore, NYSE Arca has filed the instant proposed rule change to obtain Commission approval to list and trade the Shares on the Exchange pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(1)) and Rule 19b–4 thereunder (17 CFR 240.19b–4). The Exchange further represents that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units shall apply to the Fund Shares. *See* Exchange Confirmation.

[7] The Exchange states that, from time to time, it may not be possible, for regulatory or other legal reasons, to replicate the Underlying Index, and in such cases, the Advisor may pursue a sampling strategy in managing the portfolio. Pursuant to this strategy, the Fund may invest the remainder of its assets in securities of companies not included in the Underlying Index if the Advisor believes that such securities will assist the Fund in tracking the Underlying Index. If a Fund pursues a sampling strategy, it will continue to invest at least 90% of its assets in the common stocks, ADRs, or GDRs of the companies in the Underlying Index.

transaction fees and expenses, dividends, distributions, taxes, reports to be distributed to beneficial owners of the Shares, availability of information regarding the Shares, calculation and dissemination of key values (*i.e.*, Intraday Indicative Value, Underlying Index value, and net asset value or ''NAV''), trading rules and halts, surveillance, and the Information Bulletin can be found in the Exchange Proposal, the Corporation's Internet Web site (*www.healthsharesinc.com*), and/or in the Fund's Registration Statement,[8] as applicable.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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 for nor received any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*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–2007–111 and should be submitted on or before November 20, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to either originally list and trade Investment Company Units or trade Investment Company Units pursuant to UTP, the Shares do not meet the generic listing requirements of NYSE Arca Equities Rule 5.2(j)(3), which permit the listing and trading of such securities in reliance upon Rule 19b–4(e) under the Act,[13] because the components of the Underlying Index do not meet the requirements of Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3).[14] Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that, upon the initial listing of any series of Investment Company Units pursuant to Rule 19b–4(e) under the Act, component stocks that, in the aggregate, account for at least 90% of the weight of the Underlying Index or portfolio, must each have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. The Exchange states that, as of October 1, 2007, those component stocks comprising the Underlying Index that individually exceed the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months account, in the aggregate, for only 88.2 % of the weight of the Underlying Index. Because such percentage misses the minimum required threshold by approximately 1.8%, the Shares cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(3).

The Commission believes, however, that the listing and trading of the Shares would be consistent with the Act. The Commission notes that, based on the Exchange's representations, the Fund Shares otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).[15] The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight margin.[16]

[8] *See* Registration Statement on Form N–1A, filed February 14, 2006 (Securities Act File No. 333–131842 and Investment Company File No. 811–21855), and amendments thereto filed with the Commission.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(e).

[14] *See supra* note 6.

[15] *See id.*

[16] *See* Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) (approving the listing and trading of shares of the HealthShares™ Orthopedic Repair exchange-traded fund where the component stocks comprising the index that individually

The Commission also notes that the Fund Shares are currently already trading on the Exchange pursuant to UTP and are substantially similar in structure and operation to other shares of HealthShares™ exchange-traded funds, the shares of which are currently listed and traded on the Exchange.[17]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CT'').[19] In addition, the Exchange will disseminate through CT or a major market data vendor an amount per Share referred to as the Intraday Indicative Value at least every 15 seconds during Exchange trading hours.[20] The value of the Underlying Index will be updated intra-day on a real time basis as individual component securities change in price and will be disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors.[21] In addition, the value of the Underlying Index will be disseminated by one or more major market data vendors once each trading day based on closing prices in the relevant exchange market. The NAV for the Fund is calculated by BNY Asset Management between 4:30 p.m. and 6:30 p.m. ET each trading day and disseminates such value to all market participants at the same time. The updated NAV is available on the Corporation's Web site at the same time that the NAV is made available to market participants. The Corporation's Web site also includes: (1) The Fund's Prospectus and Statement of Additional Information; (2) information regarding the Underlying Index; (3) the prior business day's NAV; (4) the mid-point of the bid-ask spread at the time of calculation of the NAV (the ''Bid/Ask Price''); (5) a calculation of the premium or discount the Bid/Ask Price at the time of calculation of the NAV against such NAV; (6) the component securities of the Underlying Index; (7) and a description of the methodologies used in determining the composition of the Underlying Index and certain computations. Finally, the closing prices of the Fund's Deposit Securities[22] are readily available from, as applicable, the relevant exchange, automated quotation systems, published or other public sources, or on-line information services that are major market data vendors. Similarly, information regarding market prices and volume of the Shares is broadly available on a real-time basis throughout the trading day.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Shares are consistent with the Act. The Shares will trade as equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Commission notes that trading of the Shares may be halted and/or the Shares may be delisted based on circumstances set forth under NYSE Arca Equities Rule 5.5(g)(2).[23] In particular, if the Intraday Indicative Value or the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of such values occurs; if the interruption to the dissemination of any such value persists past the trading day in which it first occurred, the Exchange will halt trading of the Shares. In addition, the Exchange states that it will cease trading the Shares based on NYSE Arca Equities Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility) and may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Some of these factors may include (1) the extent to which trading is not occurring in the securities comprising the Underlying Index and/or the financial instruments of the Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares may also be halted pursuant to the Exchange's ''circuit breaker'' rule[24] or by the halt or suspension of trading of the securities comprising the Underlying Index.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all three trading sessions (Opening, Core, and Late Trading Sessions, from 4 a.m. to 8 p.m. ET).[25]

(2) The Exchange would utilize its existing surveillance procedures applicable to equity securities to monitor trading of the Shares of the Fund. Surveillance procedures applicable to trading of the Shares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that such surveillance procedures are adequate to properly monitor the trading of the Fund Shares. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows, and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant

exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for 86.2 % of the weight of the index); 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR–NYSEArca–2007–27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was marginally higher than that allowed by NYSE Arca, Inc.'s relevant generic listing standards); and 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR–NYSEArca–2005–67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S. Telecommunications Sector Index Fund where the weightings of the most heavily weighted component stock and the five highest components of the underlying indexes, respectively, were higher than that required by NYSE Arca, Inc.'s relevant generic listing standards). *See also* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the trading pursuant to unlisted trading priveleges of shares of Vanguard Total Stock Market VIPERs, iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds, and iShares Russell 2000 Growth Funds, none of which met the trading volume requirement of the relevant generic listing criteria for NYSE).

[17] *See* Exchange Confirmation, *supra* note 5 (noting that the shares of other HealthShares™ exchange-traded funds are listed and traded on the Exchange pursuant to Rule 19b–4(e) under the Act because they meet the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3)). *See* 17 CFR 240.19b–4(e).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] *See* Exchange Confirmation, *supra* note 5 (confirming the information regarding the Shares to be disseminated through CT).

[20] *See* NYSE Arca Equities Rule 7.34 (providing for an Opening, Core, and Late Trading Session, from 4:00 a.m. to 8:00 p.m. Eastern Time or ''ET'').

[21] The Exchange states that the official index sponsors for the Underlying Index currently do not calculate an updated Underlying Index value during the Exchange's Opening and Late Trading Sessions. *See* Exchange Confirmation, *supra* note 5 (confirming when the updated value of the Underlying Index is calculated and disseminated). However, if the index sponsors do so in the future, the Exchange represents that it would not trade this product unless such official Underlying Index value is widely disseminated.

[22] ''Deposit Securities'' is defined as the basket of stocks that are part of the Fund's Underlying Index and deposited with the Corporation by participants for purposes of purchasing a group of a fixed number of Shares, also known as a ''Creation Unit.''

[23] *See supra* note 6.

[24] *See* NYSE Arca Equities Rule 7.12.

[25] *See supra* note 20.

trading violations. The Exchange may also obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG.[26]

(3) Standard and Poor's, which acts as the ''Index Administrator'' and is responsible for maintaining the Underlying Index, is neither a registered broker-dealer nor an ''affiliated person,'' as defined in Section 2(a)(3) of the 1940 Act,[27] or an affiliated person of the Fund, Advisor, Sub-Advisor,[28] Distributor,[29] or the Corporation. In addition, the Distributor is not an affiliated person of the Advisor, the Sub-Advisor, the Fund, or the Corporation.[30]

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders[31] in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations; (2) NYSE Arca Equities Rule 9.2(a),[32] which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value and Underlying Index value will not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a Prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement,[33] discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

This order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As referenced above, the Commission notes that the Fund Shares are currently trading on the Exchange pursuant to UTP[34] and are substantially similar in structure, operation, and function to the shares of other HealthShares™ exchange-traded funds, the shares of which are currently listed and trading on the Exchange pursuant to Rule 19b–4(e) under the Act.[35] In addition, the Commission notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by similar amounts.[36] Although the Fund Shares do not meet the initial listing requirement of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and therefore cannot be listed pursuant to Rule 19b–4(e),[37] the Commission believes that the Shares are substantially similar to the other HealthShares™ trading on the Exchange and notes that the Shares would otherwise comply with all other generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3).[38] The Commission also notes that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units would apply to the Fund Shares. The listing and trading of the Shares do not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Shares to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NYSEArca–2007–111) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21276 Filed 10–29–07; 8:45 am]

BILLING CODE 8011–01–P

[26] The Exchange notes that one or more of the underlying securities may trade on exchanges that are not members or affiliate members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such exchanges.

[27] *See* 15 U.S.C. 80a–2(a)(3).

[28] BNY Investment Advisors acts as the ''Sub-Advisor'' to the Fund.

[29] ALPS Distributors, Inc. is a registered broker-dealer and acts as the ''Distributor'' and underwriter of the Creation Units.

[30] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(1) (providing for restrictions to access of information concerning changes and adjustments to an index and requirements designed to prevent the use and dissemination of material, non-public information regarding the applicable index, among others).

[31] The Exchange defines an ''ETP Holder'' as a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP'' by NYSE Arca Equities for effecting approved securities transactions on NYSE Arca Equities' trading facilities. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o).

[32] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his or her other security holdings and as to his or her financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation.

[33] *See supra* note 8.

[34] *See supra* note 5.

[35] *See supra* note 17.

[36] *See supra* note 16.

[37] *See supra* note 6.

[38] *See id.*

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5975]

Presidential Permits Concerning Pipeline Facilities on the International Boundaries of the United States

AGENCY: Department of State.

ACTION: Notice.

Section 1(a) of Executive Order 13337, of April 30, 2004, designates and empowers the Secretary of State to ''receive all applications for Presidential permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country.'' Furthermore, section 1(a) of Executive Order 11423 designates and empowers the Secretary of State to receive ''all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) Pipelines, conveyor belts, and similar facilities for the exportation or importation of all products, except those specified section 1(a) of [Executive Order 13337] to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country* * *'' This authority is subject to certain exceptions with respect to facilities covered by Executive Order 10485 of September 3, 1953 (concerning electric power and natural gas facilities), and Executive Order 10530 of May 10,

1954 (concerning submarine cables). section 2(b) of Executive Order 11423 and section 3(b) of Executive Order 13337 authorizes the Secretary of State to issue such further rules and regulations and to prescribe such further procedures as may from time to time be deemed necessary or desirable for the exercise of the authority conferred by the Executive Orders.

As noted in the preamble to Executive Order 11423, it is desirable to provide a systematic method of evaluation in connection with the issuance of Presidential permits. Moreover, Executive Order 13212 instructs federal agencies to expedite their review of permits for energy related projects or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. Therefore, in accordance with Executive Orders 11423 and 13337 and in furtherance of this foreign affairs function, the Department of State plans to assemble an interagency working group, consisting of relevant State Department personnel and personnel from other interested federal agencies, to develop guidance regarding a definition of ''U.S. facilities at the borders of the United States for the exportation or importation of petroleum, petroleum products, coal, or other fuels'' for purposes of Presidential permits issued under Executive Order 13337, and ''construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of water or sewage to or from a foreign country'' for purposes of Presidential permits under Executive Order 11423.

The Department intends to focus in particular on what portion of an international pipeline should be considered to constitute ''facilities at the borders of the United States'' for these purposes. The Department is also considering whether to apply this definition to all pending and future applications for Presidential permits under section 1(a) of Executive Order 13337 and section 1(a)(i)–(ii) of Executive Order 11423, both for new pipeline proposals and for modifications to or transfers of previously-permitted pipeline facilities. (In considering this change, the Department does not intend to issue a new or amended Presidential permit with respect to a previously-permitted pipeline facility, where the application is submitted solely for the purpose of limiting the definition of ''U.S. facilities'' in the existing permit).

Establishing a consistent definition is expected to aid permit applicants to prepare appropriate documentation in support of applications for Presidential permits subject to section 1(a) of Executive Order 13337 and section 1(a)(i)–(ii) of Executive Order 11423. The scope of the definition would also have implications for the scope of the environmental review conducted by the Department in accordance with the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*), regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508), and the Department of State's implementing regulations (22 CFR Part 161; see, in particular 22 CFR 161.7(c)(1)).

The Department's final decision and guidelines, if any, on this issue will be published in the **Federal Register**.

DATES: The Department of State welcomes public comment and invites those who are interested in submitting comments relative to this issue to provide such comments on or before November 29, 2007 to Jeff Izzo, International Energy Commodity Policy, Room 4843, Department of State, Washington, DC 20520, or e-mail to *izzojr@state.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Izzo, Office of International Energy and Commodity Policy (EEB/ESC/IEC/EPC), Room 4843, Department of State, Washington, DC 20520, telephone 202–647–1291, facsimile 202–647–4037, e-mail *izzojr@state.gov.*

Dated: October 23, 2007.

Stephen J. Gallogly,

Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. E7–21324 Filed 10–29–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–29137]

Agency Information Collections; Extension of a Currently Approved Collection: Transportation of Hazardous Materials, Highway Routing

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 and invites public comment. The FMCSA requests approval to extend an existing information collection entitled ''Transportation of Hazardous Materials, Highway Routing,'' which requires States and Indian tribes to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on the highway.

DATES: We must receive your comments on or before December 31, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA Docket Number FMCSA–2007–29137 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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://www.regulations.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://www.regulations.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 acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting 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** on April 11, 2000 (65 FR

19477–19478; April 11, 2000). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James O. Simmons, Hazardous Materials Division, phone (202) 366–6121; FAX (202) 366–3921; or e-mail *james.simmons@dot.gov*; Federal Motor Carrier Safety Administration, DOT, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m. EST, Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background: The data for the Transportation of Hazardous Materials; Highway Routing designations are collected under authority of 49 U.S.C. 5112 and 5125. That authority places responsibility on the Secretary of Transportation (Secretary) to specify and regulate standards for establishing, maintaining, and enforcing routing designations.

Under 49 CFR 397.73, the Administrator has the authority to request that each State and Indian tribe, through its routing agency, provide information identifying hazardous materials routing designations within their jurisdictions. That information is collected and consolidated by the FMCSA and published annually in whole, or as updates, in the **Federal Register**.

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently approved collection.

Respondents: The reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas, and the Virgin Islands.

Frequency: There is one response annually from approximately 53 respondents.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden Hours: 13 hours [53 respondents x 1 response x15 minutes per response/60 minutes = 13.25 hours, rounded to 13 hours].

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 performance of FMCSA's functions; (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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued On: October 24, 2007.

Michael S. Griffith,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E7–21281 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 38]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: The Federal Railroad Administration (FRA), U.S. Department of Transportation.

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Coordinator, at: FRA; 1120 Vermont Avenue, NW., Mailstop 25; Washington, DC 20590; telephone (202) 493–6212, or Grady C. Cothen, Jr., FRA Deputy Associate Administrator for Safety, at: FRA; 1120 Vermont Avenue, NW., Mailstop 25; Washington, DC 20590; telephone (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports as of September 25, 2006 (71 FR 55823). The 32nd full Committee meeting was held June 26, 2007.

Since its first meeting in April 1996, the RSAC has accepted 24 tasks. The status for each of the tasks is provided below:

Open Tasks

Task 96–4: Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a working group was established. The working group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads.

Contact: Grady Cothen, (202) 493–6302.

Task 03–01: Passenger Safety. This task was accepted on May 20, 2003, and a working group was established. Before embarking on substantive discussions about a specific task, the working group wrote a specific description of the task. The working group reports planned activity to the full Committee at each scheduled, full RSAC meeting, including milestones for the completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues were completed. At the second meeting held November 6–7, 2003, four task groups were established: Emergency preparedness, mechanical-general issues, mechanical-safety appliances, and track/vehicle interaction. The task groups met and reported on activities for working group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The working group met March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on general passenger safety. The working group met on April 17–18, 2007, and the next meeting is scheduled for December 11–12, 2007.

(Emergency Preparedness) At the working group meeting of March 9–10, 2005, the working group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency egress and rescue access. These recommendations were presented to and approved by the full Committee on May 18, 2005. The working group met September 7–8, 2005, and additional, supplementary recommendations were presented to, and accepted by, the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006, and was open for comments until October 23, 2006. The working group agreed upon recommendations for the resolution of final comments during the April 17–18, 2007, meeting. The recommendations were presented to, and approved by, the full RSAC Committee on June 26, 2007, and FRA is currently preparing the final rule. The next working group meeting is scheduled for October 17–18, 2007.

Contact: Brenda Moscoso, (202) 493–6282.

(General Mechanical) (Completed) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CFR) Part 238) were approved by the full Committee on January 26, 2005. At the working group meeting of September 7–8, 2005, the

task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

(General Passenger Safety) At the working group meeting April 17–18, 2007, the task force presented a progress report to the working group. The task force met July 18–19, 2007, and afterwards it reported proposed reporting codes for injuries involving the platform gap, which were approved by the working group by mail ballot during September 2007. The task force is preparing an outline for work on Emergency Order 20, which will be presented to the working group in December 2007. Additionally, the task force continues work on door securement and second train passing. It has also drafted guidance material for management of the gap, which will be considered by the working group at the December 2007 meeting.

Contact: Dan Knote, (631) 567–1596.

(Passenger Equipment Crashworthiness) The Crashworthiness Task Force provided consensus recommendations on static end strength that were adopted by the working group September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007.

Several comments were entered into the docket. FRA is evaluating each of the comments received and plans to have the final rule text completed by May 2008. To validate the crashworthiness requirements of the rule, FRA has scheduled two full-scale, large deformation tests as prescribed in the NPRM, a corner post test in February 2008, a collision post test in March 2008, and a dynamic test in April 2008.

Contact: Gary Fairbanks, (202) 493–6322.

(Vehicle/Track Interaction) The task force is developing proposed revisions to Parts 213 and 238 principally regarding high-speed passenger service. The task force recently met October 9–11, 2007, in Washington, DC.

Contact: John Mardente, (202) 493–1335.

Task 05–01: Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR Part 214 Subpart C, *Roadway Worker Protection*, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A working group was established and reported to the RSAC any specific actions identified, as appropriate. The first meeting of the working group was held April 12–14, 2005. The working group reported planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. The working group met June 22–24, 2005; August 8–11, 2005; September 20–22, 2005; November 8–9, 2005; January 10–11, 2006; February 1–2, 2006; March 15–16, 2006; April 11–12, 2006; August 22–23, 2006; November 14–15, 2006; January 17–18, 2007; and February 27–28/March 1, 2007. The group has drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning the electronic display of track authorities. The working group reported recommendations to the full Committee at the June 26, 2007, meeting. FRA, through the NPRM process, is to address this issue along with eight additional items on which the working group was unable to reach a consensus. A draft NPRM is currently under review by the Office of Safety staff and Legal Counsel and is expected to be published in early 2008.

Contact: Christopher Schulte, (610) 521–8201.

Task 05–02: Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. A working group has been established. The working group reports planned activity to the full Committee at each scheduled, full RSAC meeting, including milestones for completion of projects and progress toward completion. The working group met July 12–13, 2005; August 31–September 1, 2005; September 28–29, 2005; October 25–26, 2005; November 16–17, 2005; and December 6–7, 2005. The final working group meeting devoted to developing a proposed rule was held February 8–9, 2006. The working group was unable to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372), with public comments due by December 11, 2006. Two reviews were held on February 8–9, 2007, and April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. The most recent working group meeting was held September 27–28, 2007.

Contact: Douglas Taylor, (202) 493–6255.

Task 06–01: Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, *Railroad Locomotive Safety Standards*, and revise as appropriate. A working group was established with the mandate to report any planned activity to the full Committee at each scheduled, full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first working group meeting was held May 8–10, 2006. Working group meetings were held August 8–9, 2006; September 25–26, 2006; October 30–31, 2006; January 9–10, 2007; and the working group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the working group for clarification and FRA published a final rule on October 19, 2007 (72 FR 59216). The working group is continuing the review of Part 229 with a view to proposing further revisions to update the standards. The next working group meeting is scheduled for November 27–28, 2007.

Contact: George Scerbo, (202) 493–6249.

Task 06–02: Track Safety Standards and Continuous Welded Rail. Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109–59, ''SAFETEA–LU''), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for the inspection of joint bars in continuous welded rail (CWR) to detect cracks that could affect the integrity of the track structure (49 U.S.C. 20142(e)). FRA published an Interim Final Rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA

offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA is reviewing the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR, related to provisions of the Track Safety Standards, with particular emphasis on the reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures in track using CWR. A working group has been established. The working group will report any planned activity to the full Committee at each scheduled, full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held April 3–4, 2006, at which time the working group reviewed comments on the IFR. The second working group meeting was held April 26–28, 2006. The working group also met May 24–25, 2006, and July 19–20, 2006. The working group reported consensus recommendations for the final rule that were accepted by the full Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The working group is continuing review of Section 213.119 with a view to proposing further revisions to update the standards. The working group met June 27–28, 2007, and August 15–16, 2007, and the next meeting is scheduled for October 23–24, 2007.

Contact: Ken Rusk, (202) 493–6236.

Task 06–03: Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment as well as the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A working group has been established. The working group will report any planned activity to the full Committee at each scheduled, full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held December 12–13, 2006. The working group met February 20–21, 2007; July 24–25, 2007; and August 29–30, 2007. The next working group meetings are scheduled for October 31–November 1, 2007, and December 3–4, 2007. A task force of physicians was established in May 2007 to work on specific medical exam-related issues. The task force had meetings or conference calls on July 24, 2007; August 20, 2007; and October 15, 2007, and will meet again on October 31, 2007.

Contact: Alan Misiaszek, (202) 493–6002.

Task 07–01: Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on CWR, specifically, review controls applied to the reuse of rail in CWR ''plug rail''; review the issue of cracks emanating from bond wire attachments; consider improvements in the Track Safety Standards related to fastening of rail-to-concrete ties; and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The working group will report any planned activity to the full Committee at each scheduled, full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held June 27–28, 2007, and the group met again August 15–16, 2007. The next scheduled meeting is October 23–24, 2007.

Contact: Ken Rusk, (202) 493–6236.

Completed Tasks

Task 96–1: (Completed) Revising the Freight Power Brake Regulations.

Task 96–2: (Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3: (Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5: (Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6: (Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7: (Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8: (Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions.

Task 97–1: (Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2: (Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3: (Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5:* (Completed) Defining Positive Train Control functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6: (Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7: (Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1: (Completed—task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1: (Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on October 24, 2007.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. E7–21280 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2007 0006]

Maintenance and Repair Reimbursement Pilot Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of extension of application deadline.

SUMMARY: The Maritime Administration is hereby giving notice that the closing date for filing applications to enroll in the Maintenance and Repair Reimbursement Pilot Program is extended until December 30, 2007. The notice announcing the initial application deadline was published in the **Federal Register** on July 2, 2007 (72 FR 36103). An extension to October 30, 2007 was previously published in the **Federal Register** on July 30, 2007 (72 FR 41581–01).

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–3511; or e-mail: *Jean.McKeever@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 3517 of the National Defense Authorization Act for fiscal year 2007 (Pub. L. 109–163) requires a person who is awarded a Maritime Security Program (''MSP'') agreement to also enter into an agreement with the Maritime Administration to perform maintenance and repair (''M&R'') work in United States shipyards as a condition of the MSP award. The Maritime Administration's M&R regulations do not apply the M&R condition to contractors who have already been awarded an M&R agreement. Thus, the Maritime Administration's M&R regulations make the M&R obligation mandatory on new awardees, including transferees, of MSP agreements, and voluntary for existing MSP contractors. The M&R regulations were published in the **Federal Register** on February 6, 2007 (72 FR 5342–01), but did not specify a time period for submitting applications. The deadline for applying for the M&R program is being extended to accommodate one or more carriers that are considering submitting applications, but need additional time to make a decision.

(Authority: 49 CFR 1.66)

Dated: October 24, 2007.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E7–21303 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 291X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Grant County, IN

On October 10, 2007, Norfolk Southern Railway Company (NS) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 in order to permit abandonment of 3.66 miles of rail line between mileposts TS 153.35 and TS 157.01 at Marion, in Grant County, IN (the line).[1] The line traverses U.S. Postal Service Zip Codes 46952 and 46953, and includes the stations of Kiley and Marion. NS states that service to Marion will continue via other NS lines.

The line does not contain Federally granted rights-of-way. Any documentation in NS's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2008.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 26, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub–No. 291X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the petition are due on or before November 26, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: October 22, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21163 Filed 10–29–07; 8:45 am]

BILLING CODE 4915–01–P

[1] In its environmental and historic reports and its newspaper notice, NS states that the proposed abandonment will cover 3.91 miles of rail line, between mileposts TS 153.10 and TS 157.01. Prior to filing its petition for exemption, NS determined that it still required the use of the segment between mileposts TS 153.10 and TS 153.35, and therefore would seek an abandonment exemption only for the shorter segment described above. NS states in its petition that it has notified recipients of the environmental and historic reports in writing about the change.

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of

Performance Review Board (PRB) members. This notice updates the VA Performance Review Board of the Department of Veterans Affairs that was published in the **Federal Register** on November 2, 2006 (Vol. 71, 212).

EFFECTIVE DATE: October 30, 2007.

FOR FURTHER INFORMATION CONTACT: Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7856.

VA Performance Review Board (PRB)

Paul J. Hutter, Executive in Charge of the Office of the Assistant Secretary for Human Resources and Administration (Chairperson)
Thomas J. Hogan, Special Assistant (Alternate Chairperson)
Thomas G. Bowman, Chief of Staff
Kenneth M. Greenberg, Executive Secretary to the Department (Alternate)
Ronald R. Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
Gerald M. Cross, M.D., Deputy Under Secretary for Health, Veterans Health Administration
William F. Feeley, Assistant Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration (Alternate)
Louise R. Van Diepen, Chief of Staff, Veterans Health Administration (Alternate)
John H. Thompson, Deputy General Counsel
Joseph Bauernfeind, Director, Office of Business Oversight
Robert T. Howard, Assistant Secretary for Information Technology
Jon A. Wooditch, Deputy Inspector General
Sharon K. Barnes, Deputy Chief of Staff
Richard Wannemacher, Jr., Senior Advisor, National Cemetery Administration
Karen W. Pane, Deputy Assistant Secretary for Planning and Evaluation
Lucretia M. McClenney, Director, Center for Minority Veterans
Patricia C. Adams, Deputy Assistant Secretary of the Navy (Civilian Human Resources), Department of the Navy

Veterans Benefits Administration PRB

Ronald R. Aument, Deputy Under Secretary for Benefits, (Chairperson)
Geraldine V. Breakfield, Associate Deputy Under Secretary for Management
R. Keith Pedigo, Associate Deputy Under Secretary for Policy & Program Management
Michael Walcoff, Associate Deputy Under Secretary for Field Operations
Jimmy Norris, Chief Financial Officer
Diana M. Rubens, Director, Western Area Office
Sharon K. Barnes, Deputy Chief of Staff, Office of the Secretary
A. Jacy Thurmond, Jr., Senior Advisor to the Deputy Commissioner of the Social Security Administration, U.S. Social Security Administration

Veterans Health Administration PRB

Gerald M. Cross, MD, FAAFP, Principal Deputy Under Secretary for Health
William F. Feeley, Vice-Chair, Deputy Under Secretary for Health for Operations and Management
Madhulika Agarwal, MD, Chief Patient Care Services Officer
Linda W. Belton, Network Director, VISN 11
Lawrence A. Biro, Network Director, VISN 7
Everett A. Chasen, Chief Communications Officer
Joleen M. Clark, Deputy Chief Management Support Officer (Ex Officio, Alternate)
Barbara B. Fleming, MD, PhD, Chief Quality and Performance Officer
Sanford M. Garfunkel, Network Director, VISN 5
Glen W. Grippen, Network Director, VISN 19
W. Paul Kearns III, Acting Chief Financial Officer
Craig B. Luigart, VHA Chief Information Officer
Michael E. Moreland, Network Director, VISN 4
Caitlin O'Brien, Chief Compliance and Business Integrity Officer
Robert A. Petzel, MD, Network Director, VISN 23
Catherine J. Rick, RN, MSN, Chief Nursing Officer
James Roseborough, Network Director, VISN 12
Louise R. Van Diepen, VHA Chief of Staff
Patricia Vandenberg, Assistant Deputy Under Secretary for Health for Policy and Planning
Nevin M. Weaver, Director, Management Support Office (Ex Officio)
Robert L. Wiebe, MD, Network Director, VISN 21
Joseph A. Williams, Jr., Assistant Deputy Under Secretary for Health for Operations and Management
Sharon K. Barnes, Deputy Chief of Staff
Maureen E. Gormley, Chief Operating Officer, National Institutes of Health Clinical Center, National Institutes of Health

Office of Inspector General PRB

Michael P. Stephens, Deputy Inspector General, Department of Housing and Urban Development, Office of Inspector General
Thomas J. Howard, Deputy Inspector General, National Air and Space Administration, Office of Inspector General
Elliot P. Lewis, Assistant Inspector General for Audit, Department of Labor, Office of Inspector General

Dated: October 24, 2007.

Gordon H. Mansfield,

Acting Secretary of Veterans Affairs.

[FR Doc. 07–5380 Filed 10–29–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
October 30, 2007

Part II

Federal Trade Commission

16 CFR Parts 680 and 698
Affiliate Marketing Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 680 and 698

[Regulation No. 411006]

RIN 3084-AA94

Affiliate Marketing Rule

AGENCY: Federal Trade Commission

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) is publishing a final rule to implement the affiliate marketing provisions in section 214 of the Fair and Accurate Credit Transactions Act of 2003, which amends the Fair Credit Reporting Act. The final rule generally prohibits a person from using information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations. The FACT Act requires certain other federal agencies to publish similar rules, and mandates that the FTC and other agencies consult and cooperate so that their regulations implementing this provision are consistent and comparable with one another.

DATES: This rule is effective on January 1, 2008. The mandatory compliance date for this rule is October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Loretta Garrison and Anthony Rodriguez, Attorneys, Federal Trade Commission, (202) 326-2252, Division of Privacy and Identity Protection, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA or Act), which was enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. 15 U.S.C. 1681-1681x. In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA. Pub. L. 104-208, 110 Stat. 3009.

The FCRA, as amended, provides that a person may communicate to an affiliate or a non-affiliated third party information solely as to transactions or experiences between the consumer and the person without becoming a consumer reporting agency.[1] In addition, the communication of such transaction or experience information among affiliates will not result in any affiliate becoming a consumer reporting agency. *See* FCRA §§ 603(d)(2)(A)(i) and (ii).

Section 603(d)(2)(A)(iii) of the FCRA provides that a person may communicate ''other'' information—that is, information that is not transaction or experience information—among its affiliates without becoming a consumer reporting agency if it is clearly and conspicuously disclosed to the consumer that such information may be communicated among affiliates and the consumer is given an opportunity, before the information is communicated, to ''opt out'' or direct that the information not be communicated among such affiliates, and the consumer has not opted out.

The Fair and Accurate Credit Transactions Act of 2003

The President signed into law the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act amends the FCRA to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, restrict the use of medical information in credit eligibility determinations, and allow consumers to exercise greater control regarding the type and number of solicitations they receive.

Section 214 of the FACT Act added a new section 624 to the FCRA. This provision gives consumers the right to restrict a person from using certain information obtained from an affiliate to make solicitations to that consumer. Section 624 generally provides that if a person receives certain consumer eligibility information from an affiliate, the person may not use that information to make solicitations to the consumer about its products or services, unless the consumer is given notice and an opportunity and a simple method to opt out of such use of the information, and the consumer does not opt out. The statute also provides that section 624 does not apply, for example, to a person using eligibility information: (1) to make solicitations to a consumer with whom the person has a pre-existing business relationship; (2) to perform services for another affiliate subject to certain conditions; (3) in response to a communication initiated by the consumer; or (4) to make a solicitation that has been authorized or requested by the consumer. Unlike the FCRA affiliate sharing opt-out and the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, (GLBA) non-affiliate sharing opt-out, which apply indefinitely, section 624 provides that a consumer's affiliate marketing opt-out election must be effective for a period of at least five years. Upon expiration of the opt-out period, the consumer must be given a renewal notice and an opportunity to renew the opt-out before information received from an affiliate may be used to make solicitations to the consumer.

Section 624 governs the *use* of information by an affiliate, not the *sharing* of information among affiliates, and thus is distinct from the affiliate sharing opt-out under section 603(d)(2)(A)(iii) of the FCRA. Nevertheless, the affiliate marketing and affiliate sharing opt-outs and the information subject to the two opt-outs overlap to some extent. As noted above, the FCRA allows transaction or experience information to be shared among affiliates without giving the consumer notice and an opportunity to opt out, but provides that ''other'' information, such as information from credit reports and credit applications, may not be shared among affiliates without giving the consumer notice and an opportunity to opt out. The new affiliate marketing opt-out applies to both transaction or experience information and ''other'' information. Thus, certain information will be subject to two opt-outs, a sharing opt-out and a marketing use opt-out.

Section 214(b) of the FACT Act requires the FTC, the Federal banking agencies,[2] the Securities and Exchange Commission (SEC), and the National Credit Union Administration (NCUA) to prescribe regulations, in consultation and coordination with each other, to implement the FCRA's affiliate marketing opt-out provisions. In adopting its regulation, the Commission must ensure that the affiliate marketing notification methods provide a simple means for consumers to make choices under section 624, consider the affiliate sharing notification practices employed on the date of enactment by persons subject to section 624, and ensure that notices may be coordinated and consolidated with other notices required by law.

[1] The FCRA creates substantial obligations for a person that meets the definition of a ''consumer reporting agency'' in section 603(f) of the statute.

[2] The Federal banking agencies are the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS).

II. The Proposed Regulation

The Commission published its notice of proposed rulemaking in the **Federal Register** on June 15, 2004 (69 FR 33324) to implement section 214 of the FACT Act.[3]

The proposal defined the key terms ''pre-existing business relationship'' and ''solicitation'' essentially as defined in the statute. The Commission did not propose to include additional circumstances within the meaning of ''pre-existing business relationship'' or other types of communications within the meaning of ''solicitation.''

To address the scope of the affiliate marketing opt-out, the proposal defined ''eligibility information'' to mean any information the communication of which would be a ''consumer report'' if the statutory exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA for transaction or experience information and for ''other'' information that is subject to the affiliate-sharing opt-out did not apply. The Commission substituted the term ''eligibility information'' for the more complicated statutory language regarding the communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A) of the FCRA.[4] In addition, the proposal incorporated each of the scope limitations contained in the statute, such as the pre-existing business relationship exception.

Section 624 does not state which affiliate must give the consumer the affiliate marketing opt-out notice. The proposal provided that the person communicating information about a consumer to its affiliate would be responsible for satisfying the notice requirement, if applicable. A rule of construction provided flexibility to allow the notice to be given by the person that communicates information to its affiliate, by the person's agent, or through a joint notice with one or more other affiliates. The Commission designed this approach to provide flexibility and to facilitate the use of a single coordinated notice, while taking into account existing affiliate sharing notification practices. At the same time, the approach sought to ensure that the notice would be effective because it generally would be provided by or on behalf of an entity from which the consumer would expect to receive important notices, and would not be provided along with solicitations.

The proposal also provided guidance on the contents of the opt-out notice, what constitutes a reasonable opportunity to opt out, reasonable and simple methods of opting out, and the delivery of opt-out notices. Finally, the proposal provided guidance on the effect of the limited duration of the opt-out and the requirement to provide an extension notice upon expiration of the opt-out period.

III. Overview of Comments Received

The Commission received 49 comments. In addition, the Commission considered the comments submitted to the Federal banking agencies, the NCUA, and the SEC. Many commenters sent copies of the same letter to more than one agency. The Commission received comments from a variety of banks, thrifts, credit unions, credit card companies, mortgage lenders, other non-bank creditors, and industry trade associations. The Commission also received comments from consumer groups, the National Association of Attorneys General (''NAAG''), and individual consumers.

Most industry commenters objected to several key aspects of the proposal. The most significant areas of concern raised by industry commenters related to which affiliate would be responsible for providing the notice, the scope of certain exceptions to the notice and opt-out requirement, and the content or the inclusion of definitions for terms such as ''clear and conspicuous'' and ''pre-existing business relationship.'' Consumer groups and NAAG generally supported the proposal, although these commenters believed that the proposal could be strengthened in certain respects. A more detailed discussion of the comments is contained in the Section-by-Section Analysis below.

IV. Section-by-Section Analysis

Section 680.1 Purpose and Scope

Section 680.1 of the proposal set forth the purpose and scope of the regulation. The Commission received few comments on this section. Section 680.1(b) of the final rule identifies the persons covered by this part of the Commission's rule.

Section 680.2 Examples

Proposed § 680.2 described the scope and effect of the examples included in the proposed rule. Most commenters supported the proposed use of non-exclusive examples to illustrate the operation of the rule. One commenter, concerned that the use of examples would increase the risk of litigation, urged the Commission to delete all examples.

The Commission does not believe the use of illustrative examples will materially increase the risk of litigation, but rather will provide useful guidance for compliance purposes, which may alleviate litigation risks for institutions.

As § 680.2 states, examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in the part. Similarly, the examples do not illustrate any issues that may arise under other laws or regulations.

Section 680.3 Definitions

Section 680.3 of the proposal contained definitions for the following terms: ''Act,'' ''affiliate'' (as well as the related terms ''company'' and ''control''); ''clear and conspicuous''; ''consumer''; ''eligibility information''; ''person''; ''pre-existing business relationship''; ''solicitation''; and, ''you.''

Those definitions that elicited comment are discussed below.

Affiliate, Common Ownership or Common Corporate Control, and Company

The proposed rule included definitions for ''affiliate'' as well as for the related terms ''control'' and ''company.'' For the reasons discussed below, the final rule substituted ''common ownership or common corporate control'' as a substitute for the definition of ''control,'' and renumbered it as § 680.3(d). The term ''company'' is renumbered as § 680.3(e).

Several FCRA provisions apply to information sharing with persons ''related by common ownership or affiliated by corporate control,'' ''related by common ownership or affiliated by common corporate control,'' or ''affiliated by common ownership or common corporate control.'' *E.g.*, FCRA, sections 603(d)(2), 615(b)(2), and 625(b)(2). Each of these provisions was enacted as part of the 1996 amendments to the FCRA. Similarly, section 2 of the FACT Act defines the term ''affiliate'' to mean ''persons that are related by common ownership or affiliated by

[3] On July 15, 2004, the Federal banking agencies and the NCUA published their proposed affiliate marketing rule in the **Federal Register** (69 FR 42502). The SEC published its proposed affiliate marketing rule in the **Federal Register** on July 14, 2004 (69 FR 42301).

[4] Under section 603(d)(1) of the FCRA, a ''consumer report'' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized in section 604 of the FCRA. 15 U.S.C. 1681a(d).

corporate control.'' In contrast, the GLBA defines ''affiliate'' to mean ''any company that controls, is controlled by, or is under common control with another company.'' *See* 15 U.S.C. 6809(6).

In the proposal, the Commission sought to harmonize the various FCRA and FACT Act formulations by defining ''affiliate'' to mean ''any person that is related by common ownership or common corporate control with another person.'' Industry commenters generally supported the Commission's goal of harmonizing the various FCRA definitions of ''affiliate'' for consistency. Many of these commenters, however, believed that the most effective way to do this was for the Commission to incorporate into the FCRA the definition of ''affiliate'' used in the GLBA privacy regulations. In addition, a few industry commenters urged the Commission to incorporate into the definition of ''affiliate'' certain concepts from California's Financial Information Privacy Act so as to exempt certain classes of corporate affiliates from the restrictions on affiliate sharing or marketing.[5]

The Commission does not believe there is a substantive difference between the FACT Act definition of ''affiliate'' and the definition of ''affiliate'' in section 509 of the GLBA. The Commission is not aware of any circumstances in which two entities would be affiliates for purposes of the FCRA but not for purposes of the GLBA privacy rule, or vice versa. Also, even though affiliated entities have had to comply with different FCRA and GLBA formulations of the ''affiliate'' definition since 1999, commenters did not identify any specific compliance difficulties or uncertainty resulting from the fact that the two statutes use somewhat different wording to describe what constitutes an affiliate.

Consistent with the definition of ''affiliate'' adopted by the Federal banking agencies in the final medical information rules, the Commission declines to incorporate into the definition of ''affiliate'' exceptions for entities regulated by the same or similar functional regulators, entities in the same line of business, or entities that share a common brand or identity. *See* 70 FR 70664-70665 (Nov. 22, 2005). These exceptions were incorporated into the California Financial Information Privacy Act in August 2003.[6] Congress, however, did not incorporate these exceptions from California law into the definition of ''affiliate'' when it enacted the FACT Act at the end of 2003. Accordingly, the Commission believes that the approach adopted here best effectuates the intent of Congress.

Under the GLBA privacy rule, the definition of ''control'' determines whether two or more entities meet the definition of ''affiliate.''[7] The Commission included the same definition of ''control'' in the proposal and received no comments on the proposed definition. The Commission interprets the phrase ''related by common ownership or common corporate control'' used in the FACT Act to have the same meaning as ''control'' in the GLBA privacy rule. For example, if an individual owns 25 percent of two companies, the companies would be affiliates under both the GLBA and FCRA definitions. However, the individual would not be considered an affiliate of the companies because the definition of ''affiliate'' is limited to companies.

The proposal also defined the term ''company'' to mean any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization. The proposed definition of ''company'' excluded some entities that are ''persons'' under the FCRA, including estates, cooperatives, and governments or governmental subdivisions or agencies, as well as individuals.

Clear and Conspicuous

Proposed § 680.3(c) defined the term ''clear and conspicuous'' to mean reasonably understandable and designed to call attention to the nature and significance of the information presented. Under this definition, institutions would retain flexibility in determining how best to meet the clear and conspicuous standard. The supplementary information to the proposal provided guidance regarding a number of practices that institutions might wish to consider in making their notices clear and conspicuous. These practices were derived largely from guidance included in the GLBA privacy rule.

Industry commenters urged the Commission not to define ''clear and conspicuous'' in the final rule. The principal objection these commenters raised was that this definition would significantly increase the risk of litigation and civil liability. Although these commenters recognized that the proposed definition was derived from the GLBA privacy regulations, they noted that compliance with the GLBA privacy regulations is enforced exclusively through administrative action, not through private litigation. These commenters also stated that the Federal Reserve Board had withdrawn a similar proposal to define ''clear and conspicuous'' for purposes of Regulations B, E, M, Z, and DD, in part because of concerns about civil liability. Some industry commenters believed that it was not necessary to define the term in order for consumers to receive clear and conspicuous disclosures based on industry's experience in providing clear and conspicuous affiliate sharing opt-out notices. Consumer groups believed that incorporation of the standard and examples from the GLBA privacy regulations was not adequate because they did not believe that the existing standard has proven sufficient to ensure effective privacy notices.

Except for certain non-substantive changes made for purposes of clarity, the definition of ''clear and conspicuous'' is the same as in the proposal and is substantively the same as the definition used in the GLBA privacy rule. The Commission believes that the clear and conspicuous standard for the affiliate marketing opt-out notices should be substantially similar to the standard that applies to GLBA privacy notices because the affiliate marketing opt-out notice may be provided on or with the GLBA privacy notice.

In defining ''clear and conspicuous,'' the Commission believes it is more appropriate to focus on the affiliate marketing opt-out notices that are the subject of this rulemaking, rather than adopting a generally applicable definition governing all consumer disclosures under the FCRA. This approach gives the Commission the flexibility to refine or clarify the clear and conspicuous requirement for different disclosures, if necessary.

The statute directs the Commission to provide specific guidance regarding how to comply with the clear and conspicuous standard. *See* 15 U.S.C. 1681s-3(a)(2)(B). For that reason, the Commission does not agree with commenters that requested the elimination of the definition of ''clear and conspicuous'' and related guidance. Rather, the Commission believes it is necessary to define ''clear and conspicuous'' in the final rule and provide specific guidance for how to satisfy that standard in connection with this notice.

[5] These commenters noted that the California law places no restriction on information sharing among affiliates if they: (1) are regulated by the same or similar functional regulators; (2) are involved in the same broad line of business, such as banking, insurance, or securities; and (3) share a common brand identity.

[6] *See* Cal. Financial Code § 4053(c).

[7] *See* 16 C.F.R. 313.3(g).

Accordingly, the final rule contains two types of specific guidance on satisfying the requirement to provide a clear and conspicuous opt-out notice. First, as in the proposal, the supplementary information to the final rule describes certain techniques that may be used to make notices clear and conspicuous. These techniques are described below. Second, the Commission has adopted model forms that may, but are not required to, be used to facilitate compliance with the affiliate marketing notice requirements. The requirement for clear and conspicuous notices would be satisfied by the appropriate use of one of the model forms.

As noted in the supplementary information to the proposal, institutions may wish to consider a number of methods to make their notices clear and conspicuous. The various methods described below for making a notice clear and conspicuous are suggestions that institutions may wish to consider in designing their notices. Use of any of these methods alone or in combination is voluntary. Institutions are not required to use any particular method or combination of methods to make their disclosures clear and conspicuous. Rather, the particular facts and circumstances will determine whether a disclosure is clear and conspicuous.

A notice or disclosure may be made reasonably understandable through various methods that include: using clear and concise sentences, paragraphs, and sections; using short explanatory sentences; using bullet lists; using definite, concrete, everyday words; using active voice; avoiding multiple negatives; avoiding legal and highly technical business terminology; and avoiding explanations that are imprecise and are readily subject to different interpretations. In addition, a notice or disclosure may be designed to call attention to the nature and significance of the information in it through various methods that include: using a plain-language heading; using a typeface and type size that are easy to read; using wide margins and ample line spacing; and using boldface or italics for key words. Further, institutions that provide the notice on a Web page may use text or visual cues to encourage scrolling down the page, if necessary, to view the entire notice and may take steps to ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice. When a notice or disclosure is combined with other information, methods for designing the notice or disclosure to call attention to the nature and significance of the information in it may include using distinctive type sizes, styles, fonts, paragraphs, headings, graphic devices, and appropriate groupings of information. However, there is no need to use distinctive features, such as distinctive type sizes, styles, or fonts, to differentiate an affiliate marketing opt-out notice from other components of a required disclosure, for example, where a GLBA privacy notice combines several opt-out disclosures in a single notice. Moreover, nothing in the clear and conspicuous standard requires segregation of the affiliate marketing opt-out notice when it is combined with a GLBA privacy notice or other required disclosures.

The Commission recognizes that it will not be feasible or appropriate to incorporate all of the methods described above all the time. The Commission recommends, but does not require, that institutions consider the methods described above in designing their opt-out notices. The Commission also encourages the use of consumer or other readability testing to devise notices that are understandable to consumers.

Finally, although the Commission understands the concerns of some industry commenters about the potential for civil liability, the Commission believes that these concerns are mitigated by the safe harbors afforded by the model forms in Appendix C to Part 698. The Commission notes that the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) of the FCRA, which may be enforced through private rights of action, must be included in the GLBA privacy notice. Therefore, the affiliate sharing opt-out notice generally is disclosed in a manner consistent with the clear and conspicuous standard set forth in the GLBA privacy regulations. Commenters did not identify any litigation that has resulted from the requirement to provide a clear and conspicuous affiliate sharing opt-out notice. The Commission believes that compliance with the examples and use of the model forms, although optional, should minimize the risk of litigation.

Concise

Proposed § 680.21(b) defined the term ''concise'' to mean a reasonably brief expression or statement. The proposal also provided that a notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law. Such disclosures include, but are not limited to, a GLBA privacy notice, an affiliate sharing notice under section 603(d)(2)(A)(iii) of the FCRA, and other consumer disclosures. Finally, the proposal clarified that the requirement for a concise notice would be satisfied by the appropriate use of one of the model forms contained in proposed Appendix A to the Commission's rule, although use of the model forms is not required. The Commission received no comments on the proposed definition of ''concise.'' The final rule renumbers the definition of ''concise'' as § 680.3(f). The reference to the model forms has been moved to Appendix C to Part 698, but otherwise the definition is adopted as proposed.

Consumer

Proposed paragraph (e) defined the term ''consumer'' to mean an individual. This definition is identical to the definition of ''consumer'' in section 603(c) of the FCRA.

Several commenters asked the Commission to narrow the proposed definition to apply only to individuals who obtain financial products or services primarily for personal, family, or household purposes, in part to achieve consistency with the definition of ''consumer'' in the GLBA. The FCRA's definition of ''consumer,'' however, differs from, and is broader than, the definition of that term in the GLBA. The Commission believes that the use of distinct definitions of ''consumer'' in the two statutes reflects differences in the scope and objectives of each statute. For purposes of this definition, an individual acting through a legal representative would qualify as a consumer. The final rule renumbers ''consumer'' as § 680.3(g) but otherwise adopts it without change.

Eligibility Information

Proposed § 680.3(g) defined the term ''eligibility information'' to mean any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply. As proposed, eligibility information would include a person's own transaction or experience information, such as information about a consumer's account history with that person, and ''other'' information under section 603(d)(2)(A)(iii), such as information from consumer reports or applications.

Most commenters generally supported the proposed definition of ''eligibility information'' as an appropriate means of simplifying the statutory terminology without changing the scope of the information covered by the rule. A number of commenters requested that the Commission clarify that certain types of information do not constitute eligibility information, such as name,

address, telephone number, Social Security number, and other identifying information. One commenter requested the exclusion of publicly available information from the definition. Another commenter requested additional clarification regarding the term ''transaction or experience information.'' A few commenters suggested that the Commission include examples of what is and is not included within ''eligibility information.'' Finally, one commenter urged the Commission to revise the definition to restate much of the statutory definition of ''consumer report'' to eliminate the need for cross-references.

The final rule renumbers the definition of ''eligibility information'' as 680.3(h). The Commission has revised the definition to clarify that the term ''eligibility information'' does not include aggregate or blind data that does not contain personal identifiers. Examples of personal identifiers include account numbers, names, or addresses, as indicated in the definition, as well as Social Security numbers, driver's license numbers, telephone numbers, or other types of information that, depending on the circumstances or when used in combination, could identify the individual.

The Commission also believes that further clarification of, or exclusions from, the term ''eligibility information,'' such as the categorical exclusion of names, addresses, telephone numbers, other identifying information, or publicly available information, would directly implicate the definitions of ''consumer report'' and ''consumer reporting agency'' in sections 603(d) and (f), respectively, of the FCRA. The Commission decided not to define the terms ''consumer report'' and ''consumer reporting agency'' in this rulemaking and not to interpret the meaning of terms used in those definitions, such as ''transaction or experience'' information. The Commission also notes that financial institutions have relied on these statutory definitions for many years.

Person

Proposed paragraph (h) defined the term ''person'' to mean any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. This definition is identical to the definition of ''person'' in section 603(b) of the FCRA.

One commenter requested clarification of how the proposed definition of ''person'' would affect other provisions of the affiliate marketing rule. Specifically, this commenter asked how the supplementary information's discussion of agents might affect the scope provisions of the rule.

The supplementary information to the proposal stated that a person may act through an agent, including but not limited to a licensed agent (in the case of an insurance company) or a trustee. The supplementary information also provided that actions taken by an agent on behalf of a person that are within the scope of the agency relationship would be treated as actions of that person. The Commission included these statements to address comprehensively the status of agents and to eliminate the need to refer specifically to licensed agents in the proposed definition of ''pre-existing business relationship.'' As discussed below, many commenters believed that licensed agents should be expressly included in the definition of ''pre-existing business relationship.'' The Commission has revised the final rule in response to those comments. By specifically addressing licensed agents, the final rule does not alter the general principles of principal-agent relationships that apply to all agents, not just licensed agents. The Commission will treat actions taken by an agent on behalf of a person that are within the scope of the agency relationship as actions of that person, regardless of whether the agent is a licensed agent or not. The final rule renumbers the definition of ''person'' as § 680.3(i).

Pre-Existing Business Relationship

Proposed § 680.3(i) defined the term ''pre-existing business relationship'' to mean a relationship between a person and a consumer based on the following: (1) a financial contract between the person and the consumer that is in force; (2) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person, during the 18-month period immediately preceding the date on which a solicitation covered by this part is sent to the consumer; or (3) an inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which a solicitation covered by this part is sent to the consumer.

The proposed definition generally tracked the statutory definition contained in section 624 of the FCRA, with certain revisions for clarity. Although the statute gave the Commission the authority to identify by regulation other circumstances that qualify as a pre-existing business relationship, the Commission did not propose to exercise this authority. In the final rule, the definition of ''pre-existing business relationship'' has been renumbered as §680.3(j).

Industry commenters suggested certain revisions to the proposed definition of ''pre-existing business relationship.'' Many industry commenters asked the Commission to include in the definition statutory language relating to ''a person's licensed agent.'' A number of these commenters noted that this concept was particularly important to the insurance industry where independent, licensed agents frequently act as the main point of contact between the consumer and the insurance company.

In the final rule, the phrase ''or a person's licensed agent'' has been added to the definition of ''pre-existing business relationship'' to track the statutory language. For example, assume that a person is a licensed agent for the affiliated ABC life, auto, and homeowners' insurance companies. A consumer purchases an ABC auto insurance policy through the licensed agent. The licensed agent may use eligibility information about the consumer obtained in connection with the ABC auto policy it sold to the consumer to market ABC life and homeowner's insurance policies to the consumer for the duration of the pre-existing business relationship without offering the consumer the opportunity to opt out of that use.

Regarding the first basis for a pre-existing business relationship (a financial contract in force), several industry commenters asked the Commission to clarify that a financial contract includes any in-force contract that relates to a financial product or service covered by title V of the GLBA. One commenter objected to the requirement that the contract be in force on the date of the solicitation. This commenter believed that the Commission should interpret the statute to permit the exception to apply if a contract is in force at the time the affiliate uses the information, rather than when the solicitation is sent, noting that there may be a delay between the use and the solicitation.

The Commission has adopted the first prong of the definition of ''pre-existing business relationship'' as proposed. Although a comprehensive definition of the term ''financial contract'' has not been included in the final rule, the Commission construes the statutory term ''financial contract'' at least to include a contract that relates to a

consumer's purchase or lease of a financial product or service that a financial holding company could offer under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). In addition, a financial contract which is in force will, in virtually all instances, qualify as a ''financial transaction,'' as that term is used in the second prong of the definition of ''pre-existing business relationship.'' The Commission does not agree with the suggestion that the financial contract should be in force on the date of use rather than on the date the solicitation is sent. The approach taken in the proposed and final rule is consistent with the approach used in the other two prongs of the statutory definition.

Industry commenters also suggested certain clarifications to the second basis for a pre-existing business relationship—a purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction between the consumer and the person during the preceding 18 months. Several industry commenters noted that, notwithstanding the example in the proposal regarding a lapsed insurance policy, it was not clear from what point in time the 18-month period begins to run in the case of many purchase, rental, lease, or financial transactions. These commenters asked the Commission to clarify that the 18-month period begins to run at the time all contractual responsibilities of either party under the purchase, rental, lease, or financial transaction expire. In addition, some commenters indicated that the term ''active account'' should be clarified to mean any account with outstanding contractual responsibilities on either side of an account relationship, regardless of whether specific transactions do or do not occur on that account.

The Commission has adopted the second prong of the definition of ''pre-existing business relationship'' as proposed. The Commission declines to interpret the term ''active account'' as requested by some commenters. The Commission notes that section 603(r)(4) of the FCRA defines the term ''account'' to have the same meaning as in section 903 of the Electronic Fund Transfer Act (EFTA). Under the EFTA, the term ''account'' means a demand deposit, savings deposit, or other asset account established primarily for personal, family, or household purposes. Some commenters, however, apparently believed that the term ''active account'' included extensions of credit. Credit extensions presumably would qualify as ''another continuing relationship,'' as used in the definition of ''pre-existing business relationship.''

More generally, however, even though a ''financial transaction'' would include in virtually all cases a financial contract which is in force, as noted above, the Commission does not believe it is appropriate to state that the 18-month period begins to run when all outstanding contractual responsibilities of both parties expire, regardless of whether specific transactions occur. Such a clarification would not appropriately address circumstances such as charge-offs, bankruptcies, early terminations, or extended periods of credit inactivity that could trigger commencement of the 18-month period. In addition, some contract provisions, such as arbitration clauses and choice of law provisions, may continue to have legal effect after all contractual performance has ended. The Commission does not believe that the continued effectiveness of such provisions should delay commencement of the 18-month period.

Nevertheless, the Commission believes that a few examples may provide useful guidance to facilitate compliance. For example, in the case of a closed-end mortgage or auto loan, the 18-month period generally would begin to run when the consumer pays off the outstanding balance on the loan. In a lease or rental transaction, the 18-month period generally would begin to run when the lease or rental agreement expires or is terminated by mutual agreement. In the case of general purpose credit cards that are issued with an expiration date, the 18-month period generally would begin to run when the consumer pays off the outstanding balance on the card and the card is either cancelled or expires without being renewed.

Commenters also made certain suggestions regarding the third basis for a pre-existing business relationship—an inquiry or application by the consumer regarding a product or service offered by the person during the preceding three months. Consumer groups urged the Commission to clarify that an inquiry must be made of the specific affiliate, rather than a general inquiry about a product or service. Industry commenters expressed concern about certain statements in the supplementary information that explained the meaning of an inquiry.

The Commission does not agree that an inquiry must be made of a specific affiliate. Many affiliated institutions use a central call center to handle consumer inquiries. The clarification urged by consumer groups could preclude the establishment of a pre-existing business relationship based on a consumer's call to a central call center about a specific product or service offered by an affiliate.

In the supplementary information to the proposal, the Commission noted that certain elements of the definition of ''pre-existing business relationship'' were substantially similar to the definition of ''established business relationship'' under the amended Telemarketing Sales Rule (TSR) (16 CFR 310.2(n)). The TSR definition was informed by Congress' intent that the ''established business relationship'' exemption to the ''do not call'' provisions of the Telephone Consumer Protection Act (47 U.S.C. 227 *et seq.*) should be grounded on the reasonable expectations of the consumer.[8] The Commission observed that Congress' incorporation of similar language in the definition of ''pre-existing business relationship''[9] suggested that it would be appropriate to consider the reasonable expectations of the consumer in determining the scope of this exception. Thus, the Commission explained that, for purposes of this regulation, an inquiry would include any affirmative request by a consumer for information after which the consumer would reasonably expect to receive information from the affiliate about its products or services.[10] Moreover, a consumer would not reasonably expect to receive information from the affiliate if the consumer did not request information or did not provide contact information to the affiliate.

Industry commenters objected to the discussion in the supplementary information. Some of these commenters believed that looking to the reasonable expectations of the consumer would narrow the scope of the exception and impose on institutions a subjective standard that depended upon the consumer's state of mind. These commenters also maintained that the availability of the exception should not depend upon the consumer both requesting information and providing contact information to the affiliate. Some commenters noted that either requesting information or providing contact information should suffice to establish an expectation of receiving solicitations. Other commenters noted that consumers would not provide

[8] H.R. Rep. No. 102-317, at 14-15 (1991). *See also* 68 FR 4580, 4591-94 (Jan. 29, 2003).

[9] 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein) (noting that the ''pre-existing business relationship'' definition ''is the same definition developed by the Federal Trade Commission in creating a national 'Do Not Call' registry for telemarketers.'')

[10] *See* 68 FR at 4594.

contact information if they believed that the affiliate would already have the consumer's contact information or would obtain it from the consumer's financial institution. Some commenters believed that the consumer should not have to make an affirmative request for information in order to have an inquiry. Commenters also expressed concern that the discussion in the supplementary information would require consumers to use specific words to trigger the exception.

The Commission has adopted the third prong of the definition of ''pre-existing business relationship'' as proposed. The Commission continues to believe that it is appropriate to consider what the consumer says in determining whether the consumer has made an inquiry about a product or service. It may not be necessary, however, for the consumer to provide contact information in all cases. As discussed below, the Commission has revised the examples of inquiries to illustrate different circumstances.

Consumer groups and NAAG urged the Commission not to expand the definition of ''pre-existing business relationship'' to include any additional types of relationships. Industry commenters suggested a number of additional bases for establishing a pre-existing business relationship. Several industry commenters believed that the term ''pre-existing business relationship'' should be defined to include relationships arising out of the ownership of servicing rights, a participation interest in lending transactions, and similar relationships. These commenters provided no further explanation for why such an expansion was necessary. One commenter urged the Commission to expand the definition of ''pre-existing business relationship'' to apply to affiliates that share a common trade name, share the same employees or representatives, operate out of the same physical location or locations, and offer similar products.

In addition, a number of industry commenters requested clarification of the term ''pre-existing business relationship'' as applied to manufacturers that make sales through dealers. These commenters explained that automobile manufacturers do not sell vehicles directly to consumers, but through franchised dealers. Vehicle financing may be arranged through a manufacturer's captive finance company or independent sources of financing. These commenters noted that manufacturers often provide consumers with information about warranty coverage, recall notices, and other product information. According to these commenters, manufacturers also send solicitations to consumers about their products and services, drawing in part on transaction or experience information from the captive finance company. These commenters asked the Commission to clarify that the relationship between a manufacturer and a consumer qualifies as a pre-existing business relationship based on the purchase, rental, or lease of the manufacturer's goods, or, alternatively, to exercise its authority to add this relationship as an additional basis for a pre-existing business relationship. One commenter asked the Commission to clarify that a pre-existing business relationship could be established even if the person provides a product or service to the consumer without charging a fee.

The Commission does not believe it is necessary to add any additional bases for a pre-existing business relationship. The Commission acknowledges that a pre-existing business relationship exists where a person owns the servicing rights to a consumer's loan and such person collects payments from, or otherwise deals directly with, the consumer. In the Commission's view, however, that situation qualifies as a financial transaction and thus falls within the second prong of the definition of ''pre-existing business relationship.'' The Commission has included an example, discussed below, to illustrate how the ownership of servicing rights can create a pre-existing business relationship.

A pre-existing business relationship does not arise solely from a participation interest in a lending transaction because such an interest does not result in a financial contract or a financial transaction between the consumer and the participating party. The Commission declines to add a specific provision for franchised dealers. The statute contains no special provision addressing franchised dealers, as it does for licensed agents. Moreover, a franchised dealer and a manufacturer generally are not affiliates and thus are subject to the GLBA privacy rule relating to information sharing with non-affiliated third parties. The Commission also finds no basis for including within the meaning of ''pre-existing business relationship'' any affiliate that shares a common trade name or representatives, or that operates from the same location or offers similar products. Finally, the Commission declines to add a provision that would create a pre-existing business relationship when a consumer obtains a product or service without charge from a person. Such a provision would be overly broad, is not necessary given the breadth of the statutory definition of ''pre-existing business relationship,'' and could result in circumvention of the notice requirement.

Proposed § 680.20(d)(1) provided four examples of the pre-existing business relationship exception. In the final rule, these examples have been renumbered as § 680.3(j)(2)(i)-(iv), and revised to illustrate the definition of ''pre-existing business relationship,'' rather than the corresponding exception.

The two examples relating to the first and second prongs of the definition of ''pre-existing business relationship'' have been revised in § 680.3(j)(2)(i) and (ii) to focus on a loan account creditor as the person with the pre-existing business relationship, but are otherwise substantively similar to the proposal. One commenter recommended expanding the example now contained in § 680.3(j)(2)(i) to refer to the licensed agent that wrote the policy or services the relationship. The Commission believes that adding the term ''licensed agent'' to the definition is sufficient and sees no reason to further complicate this example to illustrate how the definition applies to licensed agents.

Section 680.3(j)(2)(iii) is new and illustrates when a pre-existing business relationship is created in the context of a mortgage loan. This example specifically addresses circumstances where either the loan or ownership of the servicing rights to the loan is sold to a third party. As this example illustrates, sale of the entire loan by the original lender terminates the financial transaction between the consumer and that lender and creates a new financial transaction between the consumer and the purchaser of the loan. However, the original lender's sale of a fractional interest in the loan to an investor does not create a new financial transaction between the consumer and the investor. When the original lender sells a fractional interest in the consumer's loan to an investor but also retains an ownership interest in the loan, however, the original lender continues to have a pre-existing business relationship with the consumer because the consumer obtained a loan from the lender and the lender continues to own an interest in the loan. In addition, the ownership of servicing rights coupled with direct dealings with the consumer results in a financial transaction between the consumer and the owner of the servicing rights, thereby creating a pre-existing business relationship between the consumer and the owner of the servicing rights. The Commission notes that a financial institution that owns servicing rights generally has a customer

relationship with the consumer and an obligation to provide a GLBA privacy notice to the consumer.

The example in proposed § 680.20(d)(1)(iii) regarding applications and inquiries elicited comment. Some industry commenters urged the Commission to revise this example so that it does not depend upon the consumer's expectations or the consumer providing contact information. These commenters noted, for example, that the contact information would be self-evident if the consumer makes an e-mail request or provides a return address on an envelope. These commenters also believed that in the case of a telephone call initiated by a consumer, a captured telephone number should be sufficient to create an inquiry if the consumer requests information about products or services.

In the final rule, the Commission has crafted three separate examples from proposed § 680.20(d)(1)(iii). Section 680.3(j)(2)(iv) provides an example where a consumer applies for a product or service, but does not obtain the product or service for which she applied. Contact information is not mentioned in this example because the consumer presumably would have supplied it on the application.

Section 680.3(j)(2)(v) provides an example where a consumer makes a telephone inquiry about a product or service offered by a depository institution and provides contact information to the institution, but does not obtain a product or service from or enter into a financial transaction with the institution. The Commission does not believe that an institution's capture of a consumer's telephone number during a telephone conversation with the consumer about the institution's products or services is sufficient to create an inquiry. In that circumstance, to ensure that an inquiry has been made, the institution should ask the consumer to provide his or her contact information, or confirm with the consumer that the consumer has a pre-existing business relationship with an affiliate.

Section 680.3(j)(2)(vi) provides an example where the consumer makes an e-mail inquiry about a product or service offered by a creditor, but does not separately provide contact information. In that case, the consumer provides the creditor with contact information in the form of the consumer's e-mail address. In addition, e-mail communications, unlike telephone communications, do not provide institutions with the same opportunity to ask for the consumer's contact information.

Industry commenters recommended deleting the example in proposed § 680.20(d)(1)(iv) illustrating a call center scenario where a consumer would not reasonably expect to receive information from an affiliate. In the final rule, the Commission has included a positive example of an inquiry made by a consumer through a call center in § 680.3(j)(2)(vii), while retaining the negative example from the proposal in § 680.3(j)(3)(i). In addition, the Commission has included in § 680.3(j)(3)(ii) an example of a consumer call to ask about retail locations and hours, which does not create a pre-existing business relationship. This example is substantively similar to the example from proposed § 680.20(d)(2)(iii).

A new example in § 680.3(j)(3)(iii) illustrates a case where a consumer responds to an advertisement that offers a free promotional item, but the advertisement does not indicate that an affiliate's products or services will be marketed to consumers who respond to the advertisement. The example illustrates that the consumer's response does not create a pre-existing business relationship because the consumer has not made an inquiry about a product or service, but has merely responded to an offer for a free promotional item. Similarly, if a consumer is directed by a company with which the consumer has a pre-existing business relationship to contact the company's affiliate to receive a promotional item but the company does not mention the affiliate's products or services, the consumer's contact with the affiliate about the promotional item does not create a pre-existing business relationship between the consumer and the affiliate.

Solicitation

Proposed § 680.3(j) defined the term ''solicitation'' to mean marketing initiated by a person to a particular consumer that is based on eligibility information communicated to that person by its affiliate and is intended to encourage the consumer to purchase a product or service. The proposed definition further clarified that a communication, such as a telemarketing solicitation, direct mail, or e-mail, would be a solicitation if it is directed to a specific consumer based on eligibility information. The proposed definition did not, however, include communications that were directed at the general public without regard to eligibility information, even if those communications were intended to encourage consumers to purchase products and services from the person initiating the communications.

Congress gave the Commission the authority to determine by regulation that other communications do not constitute a solicitation. The Commission does not propose to exercise this authority. The Commission solicited comment on whether, and to what extent, various tools used in Internet marketing, such as pop-up ads, may constitute solicitations as opposed to communications directed at the general public, and whether further guidance was needed to address Internet marketing.

Most commenters believed that the proposed definition tracked the statutory definition contained in section 624 of the FCRA. A number of industry commenters, however, believed that the proposed definition misstated the types of marketing that would not qualify as a solicitation. Specifically, the first sentence of proposed § 680.3(j)(2) provided that ''[a] solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate.'' These commenters believed that a solicitation should not include *either* marketing directed at the general public *or* marketing distributed without the use of eligibility information communicated by an affiliate. Several industry commenters also requested that the Commission include the phrase ''of a product or service'' in the introductory language for consistency with the statutory definition. Some industry commenters sought clarification that certain types of communications would not constitute solicitations, for example, marketing announcements delivered via pre-recorded call center messages, automated teller machine screens, or Internet sites, or product information provided at or through educational seminars, customer appreciation events, or newsletters.

NAAG urged the Commission to clarify the portion of the definition that refers to ''a particular consumer.'' NAAG believed that mass mailings of the same or similar marketing materials to a large group of consumers could fall within the definition of ''solicitation,'' so long as the marketing is based on eligibility information received from an affiliate. NAAG expressed concern that some might construe the term ''particular'' to narrow the meaning of a ''solicitation.''

With regard to Internet marketing, industry commenters urged the Commission not to address such practices in this rulemaking. These

commenters believed that the definition of ''solicitation'' should provide specific guidance that ''pop-up'' ads and other forms of Internet marketing generally were directed to the general public and not based on eligibility information received from an affiliate, or that such marketing would fall within an exception. NAAG believed that such advertisements should be treated as solicitations if they were based on any eligibility information received from an affiliate. Consumer groups believed that if an affiliate's pop-up ads and other Internet marketing were the result of specific actions by the consumer or information collected based upon a consumer's experience on the Internet, then such marketing should be considered solicitations. These commenters also believed that pop-up ads and other Internet marketing targeted to all customers of a company should be treated as solicitations if based on the consumer's experience on the Internet.

Section 680.3(k) of the final rule contains the definition of ''solicitation.'' The definition has been revised to track the statutory language more closely. The phrase ''of a product or service'' has been added to the definition, as requested by some commenters. To ensure consistency with the definition of ''pre-existing business relationship,'' the phrase ''or obtain'' has been retained so that the definition of ''solicitation'' will include marketing for the rental or lease of goods or services, financial transactions, and financial contracts. The Commission has also deleted as unnecessary the reference to communications ''distributed without the use of eligibility information communicated by an affiliate.'' Marketing that is undertaken without the use of eligibility information received from an affiliate is not covered by the affiliate marketing rule. Moreover, there is no restriction on using eligibility information received from an affiliate in marketing directed at the general public, such as radio, television, or billboard advertisements. The phrase ''to a particular consumer'' has been retained because it is part of the statutory definition. The Commission does not believe that the phrase ''to a particular consumer'' excludes large-scale marketing campaigns from the definition of ''solicitation'' because, within such campaigns, eligibility information received from an affiliate may be used to target individual consumers.

The definition of ''solicitation'' does not distinguish between different mediums. A determination of whether a marketing communication constitutes a solicitation depends upon the facts and circumstances. The Commission has decided not to make those determinations in this rulemaking. Thus, the Commission is not adopting special rules or guidance regarding Internet-based marketing; whether Internet-based marketing is a solicitation in a particular case will be determined according to the same criteria that apply to other means of marketing. The Commission also declines to exclude categorically from the definition of ''solicitation'' marketing messages on voice response units, ATM screens, or other forms of media. Marketing delivered via such media may be solicitations if such marketing is targeted to a particular consumer based on eligibility information received from an affiliate. For example, a marketing message on an ATM screen would be a solicitation if it is targeted to a particular consumer based on eligibility information received from an affiliate, but would not be a solicitation if it is delivered to all consumers that use the ATM.

Similarly, the Commission declines to exclude educational seminars, customer appreciation events, focus group invitations, and similar forms of communication from the definition of ''solicitation.'' The Commission believes that such activities must be evaluated according to the facts and circumstances and some of those activities may be coupled with, or a prelude to, a solicitation. For example, an invitation to a financial educational seminar where the invitees are selected based on eligibility information received from an affiliate may be a solicitation if the seminar is used to solicit the consumer to purchase investment products or services.

You

The term ''you'' is defined as persons described in § 680.1(a) and the definition has been renumbered as § 680.3(l).

Section 680.21 Affiliate Marketing Opt-out and Exceptions

The Commission proposed to establish certain rules relating to the requirement to provide the consumer with notice and a reasonable opportunity and a simple method to opt out of a person's use of eligibility information that it obtained from an affiliate for the purpose of making or sending solicitations to the consumer. The Commission noted that the statute is ambiguous because it does not specify which affiliate must provide the opt-out notice to the consumer. The Commission addressed this ambiguity by proposing to place certain responsibilities on the ''communicating affiliate'' and other responsibilities on the ''receiving affiliate.''

Proposed § 680.20(a) set forth the duties of a communicating affiliate. That section required the communicating affiliate to provide a notice to the consumer before a receiving affiliate could use eligibility information to make or send solicitations to the consumer. Under the proposal, the opt-out notice would state that eligibility information may be communicated to and used by the receiving affiliate to make or send solicitations to the consumer regarding the affiliate's products and services, and would give the consumer a reasonable opportunity and a simple method to opt out.

Proposed § 680.20(a) also contained two rules of construction relating to the communicating affiliate's duty to provide the notice. The first rule of construction would have allowed the notice to be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person. The rule of construction also would have provided alternatives regarding the manner in which the notice could be given, such as by allowing the communicating affiliate to provide the notice either directly to the consumer, through an agent, or through a joint notice with one or more of its affiliates. The second rule of construction would have clarified that, to avoid duplicate notices, it would not be necessary for each affiliate that communicates the same eligibility information to provide an opt-out notice to the consumer, so long as the notice provided by the affiliate that initially communicated the information was broad enough to cover use of that information by each affiliate that received and used it to make solicitations. The proposal included examples to illustrate how each of these rules of construction would work.

Proposed § 680.20(b) set forth the general duties of a receiving affiliate. That section would have prohibited the receiving affiliate from using eligibility information it received from an affiliate to make solicitations to the consumer unless, prior to such use, the consumer was provided an opt-out notice that applied to that affiliate's use of eligibility information to make solicitations and a reasonable opportunity and simple method to opt out, and the consumer did not opt out of that use.

Most industry commenters maintained that the final rule should not require any specific entity to provide the opt-out notice, but should only require that the consumer be provided an opt-out notice covering an affiliate's use of eligibility information before a solicitation is made to the consumer. These commenters believed the final rule should provide flexibility and allow either the receiving affiliate, the communicating affiliate, or any other affiliate to provide the opt-out notice. These commenters maintained that the statute is not ambiguous and does not impose any obligations on a specific entity, such as the communicating affiliate, to provide the opt-out notice. Some of these commenters acknowledged, however, that the communicating affiliate would, as a practical matter, most likely give the opt-out notice.

A number of industry commenters expressed concern that the proposed rule would create a basis for civil liability against the communicating affiliate under section 624 because that section is covered by the FCRA's private right of action provisions in sections 616 and 617. Some commenters noted that, to avoid exposure to civil liability, a communicating affiliate would have to require receiving affiliates to commit to not using the information to make solicitations, give an opt-out notice whenever they share eligibility information with affiliates, or never share eligibility information with affiliates. These commenters maintained that, in many cases, none of these solutions would be practical, for example, where a receiving affiliate negligently failed to comply with a commitment not to make solicitations unless notice has been given to the consumer.

Several industry commenters noted that the language in section 624(a)(1)(A) that ''information may be communicated'' could be included in an opt-out notice provided by the receiving affiliate. These commenters also believed that the statutory requirement that the Commission consider existing affiliate sharing notification practices and permit coordinated and consolidated notices did not imply that the communicating affiliate should be responsible for providing the opt-out notice.

Industry commenters made several suggestions for revising the language of the proposal. Some suggested revising proposed § 680.20(a) to omit any reference to the communicating affiliate and to incorporate the passive voice used in the statute. Others suggested various ways of merging proposed § 680.20(b) into proposed § 680.20(a) to focus exclusively on the responsibilities of the receiving affiliate. One commenter identified certain drafting problems it believed arose from the fact that the proposal focused alternately on the communicating affiliate and the receiving affiliate and that those two entities may be regulated by different regulatory agencies.

A few industry commenters acknowledged that the Commission had raised legitimate concerns in the supplementary information to the proposal about how meaningful a notice could be when provided by a receiving affiliate that the consumer may not recognize. These commenters believed that this concern could be addressed through other means. One commenter, for example, suggested the following introductory language in paragraph (a)(2): ''The notice required by this paragraph (a) may be provided either in the name of the bank receiving the information (provided that such bank also identifies the affiliate which provided such information), in the name of the affiliate which provided such information, or in one or more common corporate names shared by such bank and the affiliate which provided the information, and may be provided in the following manner . . .'' Another industry commenter expressed support for the rules of construction with revisions to allow the use of brand names and trade names, as well as the actual ''corporate'' name, and to allow an agent or affiliate to send a common notice that uses more than one common name in a non-deceptive manner.

Consumer group commenters supported making the communicating affiliate responsible for providing the notice and opportunity to opt out. These commenters believed that allowing the receiving affiliate to send the opt-out notice would invite consumer confusion as to whether or not the opt-out notice itself is a solicitation. These commenters also believed that the Commission should require the names of the receiving affiliates to be clearly disclosed to the consumer. Consumer groups also believed that the proposed rules of construction struck a reasonable balance by allowing commonly named affiliates to share a notice while making clear that a notice from an affiliate with whom the consumer is not familiar will not be effective. They also suggested that the company with the pre-existing business relationship should be clearly marked on the opt-out notice.

NAAG believed that a receiving affiliate should not be permitted to give the opt-out notice solely on its own behalf because a receiving affiliate is unlikely to be an entity from which the consumer would expect to receive important communications. NAAG also requested that the Commission revise certain portions of the proposed rules of construction, for example, by deleting from proposed § 680.20(a)(2)(i) the phrase ''or previously has done business'' based on concerns that it would render the notice partially ineffective because, even without this phrase, the notice would not be required for 18 months after a customer relationship ends. NAAG also requested that the Commission revise proposed §§ 680.20(a)(2)(B)(2) and (a)(2)(C) to clarify that the common name used must be one that includes the name used by the person providing the opt-out notice.

In the proposal, the Commission did not require the opt-out notice to be provided in writing. The Commission noted, however, that it contemplated that the opt-out notice would be provided to the consumer in writing or, if the consumer agrees, electronically. The proposal solicited comment on whether there were circumstances in which it would be necessary and appropriate to allow oral notice and opt out and how an oral notice could satisfy the clear and conspicuous standard in the statute.

Industry commenters believed that the final rule should permit oral notices. These commenters identified circumstances in which a relationship is established by telephone as an example of when oral notice would be appropriate. Some industry commenters also noted that an oral notice should be permitted because the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) may be given orally, as well as in writing or electronically. Several industry commenters noted that the Commission in the Telemarketing Sales Rule and the OCC in regulations relating to debt cancellation contracts and debt suspension agreements have permitted clear and conspicuous oral notices. These commenters did not believe that allowing oral notice in these circumstances had created any enforcement difficulties for the Commission or OCC. Other industry commenters noted that institutions could demonstrate compliance through the use of scripts or by monitoring or recording calls.

Consumer groups believed that a written opt-out notice should be required in all cases. These commenters believed that, with an oral notice, it is impossible to ensure that a consumer receives the appropriate notice or information on the right to opt out. They believed that allowing oral notices

would create enforcement barriers for regulators. Consumer groups also believed that institutions have strong economic incentives to prevent consumers from opting out and would engage in misrepresentations or otherwise use language in their scripts that is designed to discourage consumers from opting out. NAAG believed that oral notices would not meet the statutory requirement for a clear, conspicuous, and concise notice, that consumers would be less likely to comprehend oral notices, and enforcement would be more difficult if oral opt-out notices were allowed.

Section 680.21(a) of the final rule contains the revised provisions regarding the initial notice and opt-out requirement. Although the language of this section has been revised and simplified, the substance of this provision is substantially similar to the proposal.

Section 680.21(a)(1) sets forth the general rule. This section contains the three conditions that must be met before a person may use eligibility information about a consumer that it receives from an affiliate to make a solicitation for marketing purposes to the consumer. First, it must be clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that the person may use shared eligibility information to make solicitations to the consumer. Second, the consumer must be provided a reasonable opportunity and a reasonable and simple method to opt out of the use of that eligibility information to make solicitations to the consumer. Third, the consumer must not have opted out. Section 680.21(a)(2) of the final rule provides an example of the general rule.

The Commission has concluded that the opt-out notice may not be provided orally, but must be provided in writing or, if the consumer agrees, electronically. The statute requires the Commission to consider the affiliate sharing notification practices employed on the date of enactment and to ensure that notices and disclosures may be coordinated and consolidated in promulgating regulations. The affiliate sharing notice under section 603(d)(2)(A)(iii) of the FCRA generally must be included in the GLBA privacy notice, which must be provided in writing, or if the consumer agrees, electronically. Requiring the affiliate marketing opt-out notice to be provided in writing, or if the consumer agrees, electronically, is thus consistent with existing affiliate sharing notification practices and promotes coordination and consolidation of the three privacy-related opt-out notices. The Commission is not persuaded that there are any circumstances where it would be necessary to provide an oral opt-out notice. A number of key exceptions to the initial notice and opt-out requirement, such as the pre-existing business relationship exception, consumer-initiated communication exception, and consumer authorization or request exception, may be triggered by an oral communication with the consumer. It also could be more difficult for the Commission to monitor and enforce compliance with the final rule if oral opt-out notices were allowed. Accordingly, the final rule requires the opt-out notice to be provided in writing or, if the consumer agrees, electronically.

Section 680.21(a)(3) identifies those affiliates who may provide the initial opt-out notice. This section provides that the initial opt-out notice must be provided either by an affiliate that has or has previously had a pre-existing business relationship with the consumer, or as part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer. The final rule follows the general approach taken in the proposal to ensure that the notice is provided by an entity known to the consumer, while eliminating potentially ambiguous and confusing terms like ''communicating affiliate'' and ''receiving affiliate.''

The Commission also has eliminated as unnecessary the rules of construction. Joint notices are now addressed directly in § 680.21(a)(3). The Commission also has concluded that the provisions from the proposal relating to notice provided by an agent are unnecessary. General agency principles, however, continue to apply. An affiliate that has or has previously had a pre-existing business relationship with the consumer may direct its agent to provide the opt-out notice on its behalf.

The Commission has concluded that the statute's silence with regard to which affiliates may provide the opt-out notice makes the statute ambiguous on this point, despite industry comments to the contrary. The Commission also continues to believe that consumers are more likely to pay attention to a notice provided by a person known to the consumer. The Commission remains concerned that a notice provided by an entity unknown to the consumer may not provide meaningful or effective notice, and that consumers may ignore or discard notices provided by unknown entities. Industry comments on the proposal did little to address those concerns. For practical reasons, the Commission believes that affiliate marketing opt-out notices typically would be provided by an affiliate that has or has previously had a pre-existing business relationship with the consumer, or as part of a joint notice, whether or not required by the rule.

The Commission appreciates industry concerns about civil liability and has revised the final rule to address those concerns. Specifically, in contrast to the proposal, the final rule does not impose duties on any affiliate other than the affiliate that intends to use shared eligibility information to make solicitations to the consumer. Although an opt-out notice must be provided by an affiliate that has or has previously had a pre-existing business relationship with the consumer (or as part of a joint notice), that affiliate has no duty to provide such a notice. Instead, the final rule provides that absent such a notice, an affiliate must not use shared eligibility information to make solicitations to the consumer. Industry concerns about civil liability also may be mitigated to some extent by the Supreme Court's recent decision in *Safeco Ins. Co. of America v. Burr*, 127 S. Ct. 2201 (June 4, 2007).

Finally, many institutions currently require consumers to provide their Social Security numbers when exercising their existing GLBA and FCRA opt-out rights. The Commission believes that institutions likely would follow their existing practice with regard to affiliate marketing opt-outs. To combat identity theft and prevent ''phishing,'' however, the Commission, along with many institutions, has been educating consumers *not* to provide their Social Security numbers to unknown entities. Furthermore, as co-Chair of the President's Identity Theft Task Force, the Commission has made a commitment to examine and recommend ways to limit the private sector's use of Social Security numbers.

The approach recommended by industry commenters would allow an unknown entity not only to provide an affiliate marketing opt-out notice to the consumer, but also to require the consumer to reveal his or her Social Security number to that unknown entity in order to exercise the opt-out right. Such an approach would send conflicting messages to consumers about providing Social Security numbers to unknown entities. This approach also would be inconsistent with the Commission's current efforts to develop a comprehensive record on the uses of the Social Security number in the private sector and evaluate their

necessity, as recommended by the President's Identity Theft Task Force.[11]

Making Solicitations

The proposal repeatedly referred to ''making or sending'' solicitations. Several commenters suggested revising the regulation to eliminate all references to ''sending'' solicitations. These commenters believed that the statute only concerns the use of eligibility information to ''make'' solicitations and does not address ''sending'' solicitations. Commenters expressed concern that by referring to ''sending'' solicitations, the proposal would apply the notice and opt-out requirements to servicers that send solicitations on behalf of another entity.

The Commission has revised the final rule to eliminate all combined references to ''making or sending'' solicitations. The general rule in section 624(a)(1), along with the duration provisions in section 624(a)(3) and the pre-existing business relationship exception in section 624(a)(4)(A), refer to ''making'' or ''to make'' a solicitation. Other provisions of the statute, such as the consumer choice provision in section 624(a)(2)(A), the service provider exception in section 624(a)(4)(C), the non-retroactivity provision in section 624(a)(5), and the definition of ''pre-existing business relationship'' in section 624(d)(1), refer to ''sending'' or ''to send'' a solicitation. The verb ''to send,'' as used in the statute, refers to a ministerial act that a service provider, such as a mail house, performs for the person making the solicitation, (*see* 15 U.S.C. 1681s-3(a)(4)(C)), or indicates the point in time after which solicitations are no longer permitted. *See* 15 U.S.C. 1681s-3(d)(1)(B) and (C).

The Commission concludes that ''making'' and ''sending'' solicitations are different activities and that the focus of the statute is primarily on the ''making'' of solicitations. For example, a service provider may send a solicitation on behalf of another entity, but it is the entity on whose behalf the solicitation is sent that is making the solicitation and thus is subject to the general prohibition on making a solicitation, unless the consumer is given notice and an opportunity to opt out. Accordingly, the Commission has revised the final rule to refer to ''making'' a solicitation, except where the statute specifically refers to ''sending'' solicitations.

The statute, however, does not describe what a person must do in order ''to make'' a solicitation. Similarly, the legislative history does not contain guidance as to the meaning of ''making'' a solicitation. Nevertheless, the Commission believes it is important to provide clear guidance regarding what activities result in making a solicitation.

One commenter suggested that the test for making a solicitation should turn on whether an affiliate having a pre-existing business relationship with the consumer retains the discretion to determine whether or not to send the solicitation. This commenter provided an example where a financial institution obtains a list of an affiliate's customers from a common shared database, applies its own criteria to this list, and then requests the affiliate with an existing business relationship to solicit the affiliate's own customers to purchase the financial institution's products or services. (Thus, the financial institution would be using eligibility information to select a list of its affiliate's customers to receive the financial institution's marketing materials.) This commenter believed that section 624 should not apply so long as the affiliate with the existing business relationship has discretion to determine whether or not to send the solicitations. This commenter also maintained that the applicability of section 624's notice and opt-out requirement should depend on who markets the product and not on what the product is or whose product it is.

Nothing in the statute indicates that the discretion of the affiliate providing the eligibility information to determine whether or not to send a solicitation on behalf of a person who has received eligibility information from that affiliate is the test for what constitutes making a solicitation. Rather, the statute focuses on whether the person receiving eligibility information from an affiliate uses that information to market its products or services to consumers. A ''discretion to send'' test would also inappropriately link the terms ''making'' and ''sending'' in a manner that would promote confusion and undercut arguments made by commenters urging the Commission to disassociate the two terms. Finally, a ''discretion to send'' test could foster circumvention of the notice and opt-out requirement, restrict the ability of consumers to prohibit solicitations in a manner not contemplated by the statute, and make it difficult for the Commission to administer and enforce the statute.

Section 680.21(b) of the final rule clarifies what constitutes ''making'' a solicitation for purposes of this part. Section 680.21(b)(1) provides that a person makes a solicitation for marketing purposes to a consumer if: (a) the person receives eligibility information from an affiliate; (b) the person uses that eligibility information to do one of the following—identify the consumer or type of consumer to receive a solicitation, establish the criteria used to select the consumer to receive a solicitation, or decide which of its products or services to market to the consumer or tailor its solicitation to that consumer; and (c) as a result of the person's use of the eligibility information, the consumer is provided a solicitation about the person's products or services.

The Commission recognizes that several common industry practices may complicate application of the rule outlined in § 680.21(b)(1). First, affiliated groups often use a common database as the repository for eligibility information obtained by various affiliates, and information in that database may be accessible to multiple affiliates. Second, affiliated companies often use service providers to perform marketing activities, and some of those service providers may provide services for a number of different affiliates. Third, an affiliate may use its own eligibility information to market the products or services of another affiliate. Sections 680.21(b)(2)-(5) address these issues.

Section 680.21(b)(2) clarifies that a person may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that the person may access. Of course, receipt of eligibility information from an affiliate is only one element of the rule outlined in § 680.21(b)(1). In the case of a common database, *use* of the eligibility information will be the key element in determining whether a person has made a solicitation.

Section 680.21(b)(3) provides that a person receives or uses an affiliate's eligibility information if a service provider acting on behalf of the person receives or uses that information in the manner described in §§ 680.21(b)(1)(i) or (b)(1)(ii), except as provided in § 680.21(b)(5), which is discussed below. Section 680.21(b)(3) also provides that all relevant facts and circumstances will determine whether a service provider is acting on behalf of a person when it receives or uses an affiliate's eligibility information in connection with marketing that person's products or services.

Section 680.21(b)(4) addresses constructive sharing. In the supplementary information to the proposal, the Commission solicited comment on whether the notice and

[11] *See Combatting Identity Theft: A Strategic Plan*, at 26–27 (April 2007) (available at *www.idtheft.gov*).

opt-out requirements of this rule should apply to circumstances that involve a ''constructive sharing'' of eligibility information to conduct marketing, given the policy objectives of section 214 of the FACT Act. By way of example, in a ''constructive sharing'' scenario, a consumer has a relationship with a financial institution, and the financial institution is affiliated with an insurance company. The insurance company develops specific eligibility criteria, such as consumers having combined deposit balances in excess of $50,000 or average monthly demand account deposits in excess of $10,000, without the use of eligibility information received from the financial institution. The insurance company provides its criteria to the financial institution and asks the institution to identify financial institution consumers that meet the eligibility criteria and send insurance company marketing materials to those consumers. The financial institution sends the marketing materials to those consumers who meet the insurance company's eligibility criteria. A consumer who meets the eligibility criteria contacts the insurance company after receiving the insurance company marketing materials in the manner specified in those materials. The consumer's response provides the insurance company with discernible eligibility information, such as through a response form that is coded to identify the consumer as an individual who meets the specific eligibility criteria.[12]

Industry commenters urged the Commission not to apply the notice and opt-out requirement to ''constructive sharing'' situations. The principal arguments made by these commenters in support of their position were as follows. First, in a constructive sharing scenario, there is no sharing of eligibility information among affiliates. Rather, the consumer provides information to an affiliate when responding. Second, section 624 applies when a person *uses* eligibility information furnished by its affiliate to make a solicitation for its own products or services to the consumer. In constructive sharing, however, the person does not use eligibility information and does not make a solicitation as defined in the statute. Third, the affiliate that sends the marketing material has a pre-existing business relationship with the consumer and is thus exempt from the notice and opt-out requirements. Fourth, if the consumer responds to the marketing materials, for example, by returning a response card to an affiliate, one or more of the exceptions to the notice and opt-out requirement would apply, such as the consumer-initiated communication exception, the pre-existing business relationship exception, or both.

Consumer groups believed that constructive sharing contravenes the intent of Congress and amounts to a loophole that should be fixed. Similarly, NAAG believed that the letter and spirit of section 624 required subjecting constructive sharing to the notice and opt-out requirements and that to find otherwise would create a significant and unwarranted exception.

After considering the constructive sharing issue, the Commission concludes that the statute only covers situations where a person *uses* eligibility information that it received from an affiliate to make a solicitation to the consumer about its products or services. In a ''constructive sharing'' scenario like that described above, a pre-existing business relationship is established between the consumer and the insurance company when the consumer contacts the insurance company to inquire about or apply for insurance products as a result of the consumer's receipt of the insurance marketing materials. This pre-existing business relationship is established before the insurance company uses any shared eligibility information to make solicitations to the consumer. Because the insurance company does not use shared eligibility information to make solicitations to the consumer before it establishes a pre-existing business relationship with the consumer, the statute does not apply.

The Commission acknowledges the concerns expressed by consumer groups and NAAG regarding the decision not to apply the notice and opt-out requirements to constructive sharing situations. The statute's affiliate marketing provisions, however, only limit the use of eligibility information received from an affiliate to make solicitations to a consumer. A separate provision of the FCRA, section 603(d)(2)(A)(iii), regulates the sharing of eligibility information among affiliates and prohibits the sharing of non-transaction or experience information, such as credit scores from a consumer report or income from an application, among affiliates, unless the consumer is given notice and an opportunity to opt out of such sharing. The FCRA does not restrict the sharing of transaction or experience information among affiliates unless that information is medical information. Section 603(d)(2)(A)(iii) operates independent of the affiliate marketing rule. Thus, the existence of a pre-existing business relationship between a consumer and an affiliate that seeks to use shared eligibility information, such as credit scores or income, to market to that consumer (or the applicability of another exception to this affiliate marketing rule) does not relieve the entity sharing the credit score or income information of the requirement to comply with the affiliate sharing notice and opt-out provisions of section 603(d)(2)(A)(iii) of the FCRA before it shares that non-transaction or experience information with its affiliate.[13]

Section 680.21(b)(4) describes two situations where a person is deemed *not* to have made a solicitation subject to this part. Both situations assume that the person has not used eligibility information received from an affiliate in the manner described in § 680.21(b)(1)(ii). First, a person does not make a solicitation subject to this part if that person's affiliate uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market the person's products or services to the consumer. Second, if, in the situation just described, the person's affiliate directs its service provider to use the affiliate's own eligibility information to market the person's products or services to the consumer, and the person does not communicate directly with the service provider regarding that use of the eligibility information, then the person has not made a solicitation subject to this part.

The core concept underlying the second prong of this provision is that the affiliate that obtained the eligibility information in connection with a pre-existing business relationship with the consumer controls the actions of the service provider using that information. Therefore, the service provider's use of the eligibility information should not be attributed to the person whose products or services will be marketed to consumers. In such circumstances, the service provider is acting on behalf of the affiliate that obtained the eligibility information in connection with a pre-existing business relationship with the consumer, and not on behalf of the

[12] The supplementary information to the proposal noted that the notice and opt-out requirement would not apply if, for example, an insurance company asked its affiliated financial institution to include insurance company marketing material in periodic statements sent to consumers by the financial institution without regard to eligibility information.

[13] A sharing of information occurs if a reference code included in marketing materials reveals one affiliate's information about a consumer to another affiliate upon receipt of a consumer's response.

person whose products or services will be marketed to that affiliate's consumers.

The Commission also recognizes that there may be situations where the person whose products or services are being marketed *does* communicate with the affiliate's service provider. This may be the case, for example, where the service provider performs services for various affiliates relying on information maintained in and accessed from a common database. In certain circumstances, the person whose products or services are being marketed may communicate with the affiliate's service provider, yet the service provider is still acting on behalf of the affiliate when it uses the affiliate's eligibility information in connection with marketing the person's products or services. Section 680.21(b)(5) describes the conditions under which a service provider would be deemed to be acting on behalf of the affiliate with the pre-existing business relationship, rather than the person whose products or services are being marketed, notwithstanding direct communications between the person and the service provider.

Section 680.21(b)(5) builds upon the concept of control of a service provider and thus is a natural outgrowth of § 680.21(b)(4). Under the conditions set out in § 680.21(b)(5), the service provider is acting on behalf of an affiliate that obtained the eligibility information in connection with a pre-existing business relationship with the consumer because, among other things, the affiliate controls the actions of the service provider in connection with the service provider's receipt and use of the eligibility information. This provision is designed to minimize uncertainty that may arise from application of the facts and circumstances test in § 680.21(b)(3) to cases that involve direct communications between a service provider and a person whose products and services will be marketed to consumers.

Section 680.21(b)(5) provides that a person does not make a solicitation subject to this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that the person may access) receives eligibility information from the person's affiliate that the person's affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market the person's products or services to the consumer, so long as the following five conditions are met.

First, the person's affiliate controls access to and use of its eligibility information by the service provider (including the right to establish specific terms and conditions under which the service provider may use such information to market the person's products or services). This requirement must be set forth in a written agreement between the person's affiliate and the service provider. The person's affiliate may demonstrate control by, for example, establishing and implementing reasonable policies and procedures applicable to the service provider's access to and use of its eligibility information.

Second, the person's affiliate establishes specific terms and conditions under which the service provider may access and use that eligibility information to market the person's products or services (or those of affiliates generally) to the consumer, and periodically evaluates the service provider's compliance with those terms and conditions. These terms and conditions may include the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials. The specific terms and conditions established by the person's affiliate must be set forth in writing, but need not be set forth in a written agreement between the person's affiliate and the service provider. If a periodic evaluation by the person's affiliate reveals that the service provider is not complying with those terms and conditions, the Commission expects the person's affiliate to take appropriate corrective action.

Third, the person's affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of the person's products or services. This requirement must be set forth in a written agreement between the person's affiliate and the service provider.

Fourth, the person's affiliate is identified on or with the marketing materials provided to the consumer. This requirement will be construed flexibly. For example, the person's affiliate may be identified directly on the marketing materials, on an introductory cover letter, on other documents included with the marketing materials, such as a periodic statement, or on the envelope which contains the marketing materials.

Fifth, the person does not directly use the affiliate's eligibility information in the manner described in § 680.21(b)(1)(ii).

These five conditions together ensure that the service provider is acting on behalf of the affiliate that obtained the eligibility information in connection with a pre-existing business relationship with the consumer because that affiliate controls the service provider's receipt and use of that affiliate's eligibility information.

Section 680.21(b)(6) provides six illustrative examples of the rule relating to making solicitations as set forth in §§ 680.21(b)(1)-(5).

Exceptions

Proposed § 680.20(c) contained exceptions to the requirements of this part and incorporated each of the statutory exceptions to the affiliate marketing notice and opt-out requirements that are set forth in section 624(a)(4) of the FCRA. The Commission has revised the preface to the exceptions for clarity to provide that the provisions of this part do not apply to ''you'' if a person uses eligibility information that it receives from an affiliate in certain circumstances. In addition, each of the exceptions has been moved to § 680.21(c) in the final rule and is discussed below.

Pre-existing Business Relationship Exception

Proposed § 680.20(c)(1) provided that the provisions of this part would not apply to an affiliate using eligibility information to make a solicitation to a consumer with whom the affiliate has a pre-existing business relationship. As noted above, a pre-existing business relationship exists when: (1) there is a financial contract in force between the affiliate and the consumer; (2) the consumer and the affiliate have engaged in a financial transaction (including holding an active account or a policy in force or having another continuing relationship) during the 18 months immediately preceding the date of the solicitation; (3) the consumer has purchased, rented, or leased the affiliate's goods or services during the 18 months immediately preceding the date of the solicitation; or (4) the consumer has inquired about or applied for a product or service offered by the affiliate during the 3-month period immediately preceding the date of the solicitation. Proposed § 680.20(d)(1) provided examples of the pre-existing business relationship exception. As explained above, the Commission has

revised the examples from proposed § 680.20(d)(1) in the final rule and included them as examples of the definition of ''pre-existing business relationship'' rather than as examples of the pre-existing business relationship exception.

Section 680.21(c)(1) of the final rule revises the pre-existing business relationship exception to delete the word ''send'' and to eliminate as unnecessary the cross-reference to the location of the definition of ''pre-existing business relationship.'' As discussed above, commenters made a number of suggestions regarding the definition of ''pre-existing business relationship.'' The Commission has addressed those comments elsewhere. Most commenters supported the proposed text of the pre-existing business relationship exception, which generally tracks the statutory language.

Some commenters, however, apparently believed that the pre-existing business relationship exception is broader than it actually is. For example, assume that an insurance company has a pre-existing business relationship with a consumer and shares eligibility information about the consumer with its affiliates by putting that information into a common database that is accessible by all affiliates. The insurance company's lending affiliate accesses the database, reviews the data on the insurance company's consumers and, based on its review, decides to market to some of the insurance company's consumers. Rather than sending the solicitations itself, the lender asks the insurance company with the pre-existing business relationship to send solicitations on its behalf to the insurance company's consumers. As noted above, one commenter believed that in this circumstance the pre-existing business relationship exception would apply so long as the insurance company retained the discretion to decide whether or not to send the solicitations on behalf of the lender. However, the Commission concludes that this situation does not fall within the pre-existing business relationship exception. Instead, the lender makes the solicitation because it used eligibility information received from an affiliate to select the consumer to receive a solicitation about its products or services and, as a result, the consumer is provided a solicitation. To eliminate any confusion and clarify the scope of the exception, the Commission has added an example in § 680.21(d)(1) of the final rule to illustrate a situation where the pre-existing business relationship exception would apply.

Employee Benefit Plan Exception

Proposed §680.20(c)(2) provided that the provisions of this part would not apply to an affiliate using the information to facilitate communications to an individual for whose benefit the affiliate provides employee benefit or other services under a contract with an employer related to and arising out of a current employment relationship or an individual's status as a participant or beneficiary of an employee benefit plan. One commenter believed that the exception should be revised to permit communications ''to an affiliate about an individual for whose benefit an entity provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan.'' This commenter also suggested deleting the phrase ''you receive from an affiliate'' in the introduction to proposed § 680.20(c). This commenter believed that this exception should permit an employer or plan sponsor to share information with its affiliates in order to offer other financial services, such as brokerage accounts or IRAs, to its employees. This commenter further requested clarification on whether the exception applies only if related to products offered as an employee benefit.

Section 680.21(c)(2) of the final rule adopts the employee benefit exception as proposed. The Commission declined to adopt the changes suggested by the one commenter. First, the suggestion to make the exception applicable to communications ''to an affiliate about an individual for whose benefit an entity provides employee benefit or other services'' differs from the language of the statute. The language of the proposed and final rule focuses on facilitating communications ''to an individual for whose benefit the person provides employee benefit or other services,'' which tracks the statutory language better than the alternative language proposed by the commenter.

Second, the only person to whom section 624 might apply is a person that receives eligibility information from an affiliate. Specifically, the statutory preface to the exceptions provides that ''[t]his section shall not apply to a person'' using information to do certain things. The language of the statute thus makes clear that the exceptions in section 624(a)(4) of the FCRA were meant to apply to persons that otherwise would be subject to section 624. In the case of the employee benefit exception, the person using the information is also ''the person provid[ing] employee benefit or other services pursuant to a contract with an employer.'' Therefore, the Commission concludes that this exception, like the other provisions of this part, should apply only to a person that uses eligibility information it receives from an affiliate to make solicitations to consumers about its products or services.

Service Provider Exception

Proposed § 680.20(c)(3) provided that the provisions of this part would not apply to an affiliate using the information to perform services for another affiliate, unless the services involve making or sending solicitations on its own behalf or on behalf of an affiliate and the service provider or such affiliate is not permitted to make or send such solicitations as a result of the consumer's election to opt out. Thus, under the proposal, when the notice has been provided to a consumer and the consumer has opted out, an affiliate subject to the consumer's opt-out election may not circumvent the opt-out by instructing the person with the consumer relationship or another affiliate to send solicitations to the consumer on its behalf.

Several industry commenters urged the Commission to revise the proposed exception to conform to the statutory language. Specifically, with respect to the exclusion from the service provider exception, these commenters recommended that the Commission delete the references to solicitations on behalf of the service provider. Some of these commenters maintained that the references to solicitations on behalf of the service provider itself would impose additional burdens and costs on companies that use a single affiliate to provide various administrative services to other affiliates and would make it more difficult to provide general educational materials to consumers. Some of these commenters also asked the Commission to clarify that the limitation in the service provider exception has no applicability to any other exception.

Section 680.21(c)(3) of the final rule revises the service provider exception to delete as surplusage the references to solicitations by a service provider on its own behalf. The Commission notes that the general rule in § 680.21(a)(1) prohibits a service provider from using eligibility information it received from an affiliate to make solicitations to the consumer about its own products or services unless the consumer is given notice and an opportunity to opt out or

unless one of the other exceptions applies. The service provider exception simply allows a service provider to do what the affiliate on whose behalf it is acting may do, such as using shared eligibility information to make solicitations to consumers to whom the affiliate is permitted to make such solicitations. The final rule also deletes the word ''make'' from the exception to the service provider exception because, as discussed above, ''making'' and ''sending'' solicitations are distinct activities and this provision of the statute uses the verb ''to send.'' The Commission notes that, although the statute contains separate service provider and pre-existing business relationship exceptions, nothing in those exceptions prevents an affiliate that has a pre-existing business relationship with the consumer from relying upon the service provider exception, where appropriate. Section 680.21(d)(2) of the final rule provides examples of the service provider exception.

Consumer-Initiated Communication Exception

Proposed § 680.20(c)(4) provided that the provisions of this part would not apply to an affiliate using the information to make solicitations in response to a communication initiated by the consumer. The proposed rule further clarified that this exception may be triggered by an oral, electronic, or written communication initiated by the consumer.

The supplementary information noted that to be covered by the proposed exception, the use of eligibility information must be responsive to the communication initiated by the consumer. The supplementary information also explained that the time period during which solicitations remain responsive to the consumer's communication would depend on the facts and circumstances. As illustrated in the example in proposed § 680.20(d)(2)(iii), if a consumer were to call an affiliate to ask about retail locations and hours, the affiliate could not use eligibility information to make solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication. Conversely, the example in proposed § 680.20(d)(2)(i) illustrated that if the consumer calls an affiliate to ask about its products or services and provides contact information, solicitations related to those products or services would be responsive to the communication and thus permitted under the exception. Finally, as illustrated by the example in proposed § 680.20(d)(2)(ii), the Commission also contemplated that a consumer would not initiate a communication if an affiliate made the initial call and left a message for the consumer to call back, and the consumer responded.

Commenters generally supported the text of the proposed consumer-initiated communication exception. Several commenters, however, urged the Commission to either delete the phrase ''orally, electronically, or in writing'' from the regulation or modify the language to read ''whether orally, electronically, or in writing.'' These commenters maintained that other means of communication may be used by consumers in the future and should not be precluded by the regulations. Another commenter welcomed the reference to oral communications and requested that the Commission clarify that electronic communications refers to both e-mail and facsimile transmissions.

Many industry commenters objected to the statement in the supplementary information that to qualify for this exception, the use of eligibility information ''must be responsive'' to the communication initiated by the consumer. These commenters believed that the concept of ''responsiveness'' creates a vague, subjective, and narrow standard that could subject institutions to compliance risk. These commenters noted that the Commission did not and could not provide a clear definition of what would be ''responsive.'' Some of these commenters noted that consumers may not be familiar with the various types of products or services available to them and the different affiliates that offer those products or services and may rely on the institution to inform them about available options. For this reason, most of these commenters maintained that the exception should not limit an affiliate from responding with solicitations about any product or service. Some of these commenters believed that it would be difficult to monitor compliance with or to develop scripts for a ''responsiveness'' standard by customer service representatives. One commenter noted that the Senate bill used more restrictive language in this exception than the final bill passed by Congress. Some commenters also objected to the statement that the time period during which solicitations remain responsive would depend on the facts and circumstances.

NAAG supported the statement in the supplementary information that, to qualify for this exception, the use of eligibility information ''must be responsive'' to the communication initiated by the consumer. NAAG believed this clarification was so important that it should be incorporated into the rule itself. NAAG also suggested imposing a specific time limit to allow solicitations to be made for no more than 30 days after the consumer-initiated communication under this exception.

Industry commenters also objected to some of the examples. In particular, industry commenters objected to the example in proposed § 680.20(d)(2)(i) on two grounds. First, these commenters believed that the consumer should not have to supply contact information in order to trigger the exception. These commenters noted that such a requirement would seem to preclude solicitations over the phone during the same call by presuming that a solicitation would be made by mail or e-mail. Some of these commenters also believed that consumers would expect an affiliated company, especially a company with a common brand, to have their contact information already and would not want to provide it again. Second, as noted above, some commenters maintained that the affiliate should be able to respond by making solicitations about any product or service, not just those mentioned by the consumer.

Many industry commenters objected to the example in proposed § 680.20(d)(2)(ii) about the consumer responding to a call back message. These commenters believed that such a call back should qualify as a consumer-initiated communication, noting that the consumer has the option of not returning the call. Moreover, these commenters noted that the customer service representative receiving the call would not know what prompted the consumer's call. Several commenters acknowledged that there may be concerns about calls made under false pretenses to prompt consumers to return the call, but suggested that those concerns should be addressed by other means, such as enforcement of the laws dealing with unfair or deceptive acts or practices.

Finally, some industry commenters expressed concerns about the example in proposed § 680.20(d)(2)(iii) regarding the consumer who calls to ask for retail locations and hours. These commenters noted that it is impossible to know what will transpire on a particular telephone call. One commenter noted, for example, that if a consumer called to ask for directions to an office, the customer service representative might ask why the consumer needed to go to that office. This, in turn, could prompt the consumer to mention a product or service that the consumer hoped to

obtain and lead to a discussion of specific products or services that might be appropriate for the consumer.

Section 680.21(c)(4) of the final rule revises the consumer-initiated communications exception to delete the reference to oral, electronic, or written communications. The Commission believes that any form of communication may come within the exception as long as the consumer initiates the communication, whether in-person or by mail, e-mail, telephone, facsimile, or through other means. New forms of communication that may develop in the future could also come within the exception.

Section 680.21(c)(4) of the final rule also provides that the communications covered by the exception are consumer-initiated communications about a person's products or services. For the exception to apply, the statute requires that a person use eligibility information ''in response to'' a communication initiated by a consumer. The Commission believes this statutory language contemplates that the consumer-initiated communications will relate to a person's products or services and that the solicitations covered by the exception will be those made in response to that communication.

The Commission also believes the exceptions should be construed narrowly to avoid undermining the general rule requiring notice and opt-out. Thus, consistent with the purposes of the statute, the Commission does not believe that a consumer-initiated communication that is unrelated to a product or service should trigger the exception. A rule that allowed any consumer-initiated communication, no matter how unrelated to a product or service, to trigger the exception would not to give meaning to the phrase ''in response to'' and could produce incongruous results. For example, if a consumer calls an affiliate solely to obtain retail hours and directions or solely to opt out, the exception is not triggered because the communication does not relate to the affiliate's products or services and making a solicitation about products or services to the consumer in those circumstances would not be a reasonable response to that communication.

The Commission recognizes, however, that if the conversation shifts to a discussion of products or services that the consumer may need, solicitations may be responsive depending upon the facts and circumstances. Likewise, if a consumer who has opted out of an affiliate's use of eligibility information to make solicitations calls the affiliate for information about a particular product or service, for example, life insurance, solicitations regarding life insurance could be made in response to that call, but solicitations regarding other products or services would not be responsive. Finally, the Commission does not believe it is appropriate to adopt a specific time limit for making solicitations following a consumer-initiated communication about products or services because solicitations will likely be made quickly and any time limit would be arbitrary.

In the final rule, the Commission has renumbered the example in proposed § 680.20(d)(2)(i) as § 680.21(d)(3)(i), and revised it to delete the references to a telephone call as the specific form of communication and the reference to providing contact information. As discussed above and illustrated in the examples in §§ 680.20(j)(2)(ii)(E) and (F), the need to provide contact information may vary depending on the form of communication used by the consumer. The new example in § 680.21(d)(3)(ii) responds to commenters' concerns by illustrating a circumstance involving a consumer-initiated communication in which a consumer does not know exactly what products or services he or she wants, but initiates a communication to obtain information about investing for a child's college education.

The Commission has renumbered the call-back example in proposed § 680.20(d)(2)(iii) as § 680.21(d)(3)(iii) and revised it. The revised example provides that where the financial institution makes an initial marketing call without using eligibility information received from an affiliate and leaves a message that invites the consumer to apply for the credit by calling a toll-free number, the consumer's response qualifies as a consumer-initiated communication about a product or service. The revised example balances commenters' concerns about tracking which calls are call backs and the Commission's concern that consumers may be induced into triggering the consumer-initiated communication exception as a result of inaccurate, incomplete, or deceptive telephone messages.

For the reasons discussed above, the Commission has renumbered the retail hours example in proposed § 680.20(d)(2)(iii) as § 680.21(d)(3)(iv), but otherwise adopted it as proposed. In addition, the new example in § 680.21(d)(3)(v) responds to commenters' concerns by illustrating a case where a consumer calls to ask about retail locations and hours and the call center representative, after eliciting information about the reason why the consumer wants to visit a retail location, offers to provide information about products of interest to the consumer by telephone and mail, thus demonstrating how the conversation may develop to the point where making solicitations would be responsive to the consumer's call.

Consumer Authorization or Request Exception

Proposed § 680.20(c)(5) clarified that the provisions of this part would not apply to an affiliate using the information to make solicitations affirmatively authorized or requested by the consumer. The proposal further provided that this exception may be triggered by an oral, electronic, or written authorization or request by the consumer. However, a pre-selected check box or boilerplate language in a disclosure or contract would not constitute an affirmative authorization or request under the proposal.

The proposal noted that the consumer authorization or request exception could be triggered, for example, if a consumer obtains a mortgage from a mortgage lender and authorizes or requests to receive solicitations about homeowner's insurance from an insurance affiliate of the mortgage lender. The consumer could provide the authorization or make the request either through the person with whom the consumer has a business relationship or directly to the affiliate that will make the solicitation. Proposed § 680.20(d)(3) provided an example of the affirmative authorization or request exception.

Most industry commenters argued that the proposed exception did not track the language of the statute because the Commission included the word ''affirmative'' in the proposed exception. These commenters believed that including the word ''affirmative'' in the proposed rule narrowed the exception in a manner not intended by Congress. Several of these commenters noted that the Commission has declined to specify what constitutes consumer consent under the GLBA privacy rule and indicated that they were not aware of any policy considerations or compliance issues that would warrant a departure from the Commission's prior position.

Some industry commenters believed that a pre-selected check box should be sufficient to evidence a consumer's authorization or request for solicitations. In other words, a consumer's decision not to deselect a pre-selected check box should constitute a knowing act of the consumer to authorize or request solicitations. Other industry

commenters believed that preprinted language in a disclosure or contract should be sufficient to evidence a consumer's authorization or request for solicitations. One commenter cited case law and Commission informal staff opinion letters relating to a consumer's written instructions to obtain a consumer report pursuant to section 604(a)(2) of the FCRA as support for allowing boilerplate language to constitute authorization or request.

A few industry commenters requested that the Commission clarify that a consumer's authorization or request does not have to refer to a specific product or service or to a specific provider of products or services in order for the exception to apply. As discussed above, industry commenters had differing views regarding the reference to oral, written, or electronic means of triggering the exception.

NAAG suggested imposing a specific time limit to allow solicitations to be made for no more than 30 days after the consumer's authorization or request under this exception.

Section 680.21(c)(5) of the final rule revises the consumer authorization or request exception to delete the word ''affirmative'' as surplusage. The deletion of the word ''affirmative'' does not change the meaning of the exception however. The consumer still must take affirmative steps to ''authorize'' or ''request'' solicitations.

The Commission construes this exception, like the other exceptions, narrowly and in a manner that does not undermine the general notice and opt-out requirement. For that reason, the Commission believes that affiliated companies cannot avoid use of the statute's notice and opt-out provisions by including preprinted boilerplate language in the disclosures or contracts they provide to consumers, such as language stating that by applying to open an account, the consumer authorizes or requests to receive solicitations from affiliates. Such an interpretation would permit the exception to swallow the rule, a result that cannot be squared with the intent of Congress to give consumers notice and an opportunity to opt out of solicitations.

The comparison made by some commenters to the GLBA privacy rule is misplaced. The GLBA and the privacy rule create an exception to permit the disclosure of nonpublic personal information ''with the consent or at the direction of the consumer.'' Section 624 of the FCRA creates an exception to permit the use of shared eligibility information ''in response to solicitations authorized or requested by the consumer.'' The Commission interprets the ''authorized or requested'' language in the FCRA exception to require the consumer to take affirmative steps in order to trigger the exception.

The Commission has made conforming changes to the example in proposed § 680.20(d)(3), which has been renumbered as § 680.21(d)(4)(i) in the final rule. In addition, the Commission has added three additional examples. The example in § 680.21(d)(4)(ii) illustrates how a consumer can authorize or request solicitations by checking a blank check box. The examples in §§ 680.21(d)(4)(iii) and (iv) illustrate that preprinted boilerplate language and a pre-selected check box would not meet the authorization or request exception.

The Commission does not believe it is appropriate to set a fixed time period for an authorization or request. As noted in the proposal, the duration of the authorization or request depends on what is reasonable under the facts and circumstances. In addition, an authorization to make solicitations to the consumer terminates if the consumer revokes the authorization.

For the same reasons discussed above, the Commission has deleted the reference to oral, electronic, or written communications from this exception to track the language of the statute. Further, the Commission does not believe it is necessary to clarify the elements of an authorization or request. The statute clearly refers to ''solicitations authorized or requested by the consumer.'' The facts and circumstances will determine what solicitations have been authorized or requested by the consumer.

Compliance with Applicable Laws Exception

Proposed § 680.20(c)(6) clarified that the provisions of this part would not apply to an affiliate if compliance with the requirements of section 624 by the affiliate would prevent that affiliate from complying with any provision of state insurance laws pertaining to unfair discrimination in a state where the affiliate is lawfully doing business. *See* FCRA, section 624(a)(4). The Commission received no comments on this provision. Section 680.21(c)(6) of the final rule adopts the state insurance law compliance exception as proposed.

One commenter requested the creation of an additional exception to permit the sharing of eligibility information among affiliates that are aligned under one line of business within an organization and that share common management, branding, and regulatory oversight (*i.e.*, banking, securities, and insurance companies). This commenter was focused on private banking enterprises. As discussed above, the Commission finds no statutory basis for creating such an exception to the notice and opt-out requirement.

Relation to Affiliate-Sharing Notice and Opt-out

Proposed § 680.20(f) clarified the relationship between the affiliate sharing notice and opt-out under section 603(d)(2)(A)(iii) of the FCRA and the affiliate marketing notice and opt-out in new section 624 of the FCRA. Specifically, the proposal provided that nothing in the affiliate marketing rule limits the responsibility of a company to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the FCRA before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

One commenter urged the Commission to delete this provision as unnecessary. In the alternative, this commenter requested that the Commission clarify that section 603(d)(2)(A)(iii) applies to the sharing of information that would otherwise meet the definition of a ''consumer report,'' and that the sharing affiliate does not automatically become a consumer reporting agency, but risks becoming a consumer reporting agency.

This provision has been renumbered as § 680.21(e) in the final rule. Section 680.21(e) has been revised to delete the clause that referred to becoming a consumer reporting agency and to substitute in its place the neutral phrase ''where applicable.''

Section 680.22 Scope and Duration of Opt-Out

Scope of the Opt-out

The Commission addressed issues relating to the scope of the opt-out in various sections of the proposal. In the supplementary information to the proposal, the Commission stated that the opt-out would be tied to the consumer, rather than to the information. Some industry commenters supported the approach of tying the opt-out to the consumer, rather than to the information. Other industry commenters, however, believed it was inappropriate to tie the opt-out to the consumer and requested that institutions have the flexibility to implement the consumer's opt-out at the account level, rather than at the consumer level. These commenters believed that an account-by-account approach would be consistent with the

menu of opt-out choices provided in this rule and the GLBA privacy rule. These commenters also noted that an account-based approach would provide the consumer with a new notice and opportunity to opt out when a former customer decides to re-establish a new relationship with the institution.

Proposed § 680.21(c) provided that the notice could be designed to allow a consumer to choose from a menu of alternatives when opting out, such as by selecting certain types of affiliates, certain types of information, or certain modes of delivery from which to opt out, so long as one of the alternatives gave the consumer the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivering solicitations. Several industry commenters objected to the requirement that the institution provide a single universal opt-out option that would allow consumers to opt out completely of all solicitations. In addition, one commenter found the reference to all types of eligibility information confusing, while another commenter noted that some institutions may want to implement the opt-out on an account-by-account basis.

Section 680.25(d) of the proposal provided that if a consumer's relationship with an institution terminated for any reason when a consumer's opt-out election was in force, the opt-out would continue to apply indefinitely, unless revoked by the consumer. Most industry commenters objected to having the opt-out period continue to apply indefinitely upon termination of the consumer's relationship with the institution. These commenters believed that this approach was not supported by the statute, would prove costly and difficult to administer, and would require the indefinite tracking of opt-outs. These commenters also believed that the five-year opt-out period would provide sufficient protection to consumers that terminate their relationship. One commenter noted that the proposed rule would impose particular hardships on mortgage lenders because those lenders often have consumer relationships of very short duration on account of selling the loans they originate into the secondary market. Consumer groups supported the proposed treatment of opt-outs for terminated consumer relationships.

Upon further examination, the Commission believes that the scope of the opt-out should be addressed comprehensively in a single section of the final rule. The Commission also concludes that tying the opt-out to the consumer could have had unintended consequences. For example, if the opt-out were tied to the consumer, an institution would have to track the consumer indefinitely, even if the consumer's relationship with the institution terminated and a new relationship were subsequently established with that institution years later. The Commission does not believe that institutions should be required to track consumers indefinitely following termination. In addition, an opt-out tied to the consumer could apply to the use of all eligibility information, not just to eligibility information about the consumer, received from an affiliate and used to make solicitations to the consumer. It is not clear from the statute or the legislative history that Congress intended the opt-out provisions of section 624 to apply to eligibility information about consumers other than the consumer to whom a solicitation is made. Finally, the Commission does not believe it is necessary to make the opt-out effective in perpetuity upon termination of the relationship.

Section 680.22(a) of the final rule brings together these different scope considerations to address comprehensively the scope of the opt-out. Under the revised approach, the scope of the opt-out is derived from language of section 624(a)(2)(A) of the FCRA and generally depends upon the content of the opt-out notice. Section 680.22(a)(1) provides that, except as otherwise provided in that section, a consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using the eligibility information received from another affiliate as described in the notice to make solicitations for marketing purposes to the consumer.

Section 680.22(a)(2)(i) clarifies that, in the context of a continuing relationship, an opt-out notice may apply to eligibility information obtained in connection with a single continuing relationship, multiple continuing relationships, continuing relationships established subsequent to delivery of the opt-out notice, or any other transaction with the consumer. Section 680.22(a)(2)(ii) provides examples of continuing relationships. These examples are substantially similar to the examples used in the GLBA privacy rule with added references to relationships between the consumer and an affiliate.

Section 680.22(a)(3)(i) limits the scope of an opt-out notice that is not connected with a continuing relationship. This section provides that if there is no continuing relationship between the consumer and a person or its affiliate, and if the person or its affiliate provides an opt-out notice to a consumer that relates to eligibility information obtained in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, the opt-out notice only applies to eligibility information obtained in connection with that transaction. The notice cannot apply to eligibility information that may be obtained in connection with subsequent transactions or a continuing relationship that may be subsequently established by the consumer with the person or its affiliate. Section 680.22(a)(3)(ii) provides examples of isolated transactions.

Section 680.22(a)(4) provides that a consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations. An opt-out notice may give the consumer the opportunity to elect to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, solicitations based on certain types of eligibility information but not other types of eligibility information, or solicitations by certain methods of delivery but not other methods of delivery, so long as one of the alternatives is the opportunity to prohibit all solicitations from all of the affiliates that are covered by the notice. The Commission continues to believe that the language of section 624(a)(2)(A) of the FCRA requires the opt-out notice to contain a single opt-out option for all solicitations within the scope of the notice.

The Commission recognizes that consumers could receive a number of different opt-out notices, even from the same affiliate. The Commission will monitor industry notice practices and evaluate whether further action is needed.

Section 680.22(a)(5) contains a special rule for notice following termination of a continuing relationship. This rule provides that a consumer must be given a new opt-out notice if, after all continuing relationships with a person or its affiliate have been terminated, the consumer subsequently establishes a new continuing relationship with that person or the same or a different affiliate and the consumer's eligibility information is to be used to make a solicitation. This special rule affords the consumer and the company a fresh start following termination of all continuing relationships by requiring a new opt-out notice if a new continuing relationship is subsequently established.

The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. The new opt-

out notice may apply more broadly to information obtained in connection with a terminated relationship and give the consumer the opportunity to opt out with respect to eligibility information obtained in connection with both the terminated and the new continuing relationships. Further, the consumer's failure to opt out does not override a prior opt-out election by the consumer applicable to eligibility information obtained in connection with a terminated relationship that is still in effect, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship. The final rule also contains an example of this special rule. The Commission notes, however, that where a consumer was not given an opt-out notice in connection with the initial continuing relationship because eligibility information obtained in connection with that continuing relationship was not shared with affiliates for use in making solicitations, an opt-out notice provided in connection with a new continuing relationship would have to apply to any eligibility information obtained in connection with the terminated relationship that is to be shared with affiliates for use in making future solicitations.

Duration and Timing of Opt-Out

Proposed § 680.25 addressed the duration and effect of the consumer's opt-out election. Proposed § 680.25(a) provided that the consumer's election to opt out would be effective for the opt-out period, which is a period of at least five years beginning as soon as reasonably practicable after the consumer's opt-out election is received. The supplementary information noted that if a consumer elected to opt out every year, a new opt-out period of at least five years would begin upon receipt of each successive opt-out election.

Some industry commenters believed that the proposal was inconsistent with the statute because it provided that the opt-out period would begin as soon as reasonably practicable after the consumer's opt-out election is received. These commenters believed that the opt-out period should begin on the date the consumer's opt-out is received and that the final rule also should allow institutions a reasonable period of time to implement a consumer's initial or renewal opt-out election before it becomes effective. Consumer groups believed that the requirement to honor an opt-out ''beginning as soon as reasonably practicable'' was too vague. These commenters believed that a consumer's opt-out should be honored within a specific length of time not to exceed 30 days after the consumer responds to the opt-out notice.

A few industry commenters urged the Commission to allow consumers to revoke an opt-out election orally. Other industry commenters requested that the final rule include a clear statement that an opt-out period may be shortened to a period of less than five years by the consumer's revocation of an opt-out election. Consumer groups approved of the Commission's statement that if a consumer opts out again during the five-year opt-out period, then a new five-year period begins. Consumer groups also supported allowing institutions to make the opt-out period effective in perpetuity so long as this is clearly disclosed to the consumer in the original notice.

The general provision regarding the duration of the opt-out has been renumbered as § 680.22(b) in the final rule, consistent with the Commission's decision to address all scope issues in the same section. The Commission has revised the duration provision to clarify that the opt-out period expires if the consumer revokes the opt-out in writing or, if the consumer agrees, electronically. The requirement for a written or electronic revocation is retained and is consistent with the approach taken in the GLBA privacy rule. The Commission does not believe it is necessary or appropriate to permit oral revocation. The Commission notes that many of the exceptions to the notice and opt-out requirements may be triggered by oral communications, as discussed above, which would enable the use of shared eligibility information to make solicitations pending receipt of a written or electronic revocation. Also, as noted in the proposal, nothing prohibits setting an opt-out period longer than five years, including an opt-out period that does not expire unless revoked by the consumer.

The Commission does not agree that the opt-out period should begin on the date the consumer's election to opt out is received. Commenters generally recognized that institutions cannot instantaneously implement a consumer's opt-out election but need time to do so. The Commission interprets the statutory language to mean that the consumer's opt-out election must be honored for a period of at least five years from the date such election is implemented. The Commission believes that Congress did not intend for the opt-out period to be shortened to a period of less than the five years specified in the statute to reflect the time between the date the consumer's opt-out election is received and the date the consumer's opt-out election is implemented.

The Commission also believes it is neither necessary nor desirable to set a mandatory deadline for implementing the consumer's opt-out election. A general standard is preferable because the time it will reasonably take to implement a consumer's opt-out election may vary.

Consistent with the special rule for a notice following termination of a continuing relationship, the duration of the opt-out is not affected by the termination of a continuing relationship. When a consumer opts out in the course of a continuing relationship and that relationship is terminated during the opt-out period, the opt-out remains in effect for the rest of the opt-out period. If the consumer subsequently establishes a new continuing relationship while the opt-out period remains in effect, the opt-out period may not be shortened with respect to information obtained in connection with the terminated relationship by sending a new opt-out notice to the consumer when the new continuing relationship is established, even if the consumer does not opt out upon receipt of the new opt-out notice. A person may track the eligibility information obtained in connection with the terminated relationship and provide a renewal notice to the consumer, or may choose not to use eligibility information obtained in connection with the terminated relationship to make solicitations to the consumer.

Proposed § 680.25(c) clarified that a consumer may opt out at any time. As explained in the supplementary information to the proposal, even if the consumer did not opt out in response to the initial opt-out notice or if the consumer's election to opt out was not prompted by an opt-out notice, a consumer may still opt out. Regardless of when the consumer opts out, the opt-out must be effective for a period of at least five years.

The Commission received few comments on this provision. Consumer groups urged the Commission to reinforce the continuing nature of the right to opt out by requiring institutions to give the opt-out notice annually along with the annual GLBA privacy notice. These commenters acknowledged that the FCRA does not specifically state that the notice is required annually, but noted that the statute also does not say that the consumer has only one opportunity to opt out.

The Commission has renumbered the provision giving the consumer the right

to opt out at any time as § 680.22(c) in the final rule, but otherwise adopted the provision as proposed. The Commission finds no statutory basis for requiring the provision of an annual opt-out notice to consumers along with the GLBA privacy notice.

Section 680.23 Contents of Opt-out Notice; Consolidated and Equivalent Notices

Contents in General

Section 680.21 of the proposal addressed the contents of the opt-out notice. Proposed § 680.21(a) would have required that the opt-out notice be clear, conspicuous, and concise, and accurately disclose: (1) that the consumer may elect to limit a person's affiliate from using eligibility information about the consumer that it obtains from that person to make or send solicitations to the consumer; (2) if applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and (3) a reasonable and simple method for the consumer to opt out.

Some commenters expressed concern about requiring the notice to specify the applicable time period and the consumer's right to extend the election once the opt-out expires. One commenter believed this would require institutions to determine in advance the length of the opt-out period. Another commenter urged the Commission to clarify that institutions could subsequently increase the duration of the opt-out or make it permanent without providing another notice to the consumer.

The Commission has renumbered the provisions addressing the contents of the opt-out notice as § 680.23(a) in the final rule and revised them. Section 680.23(a)(1) of the final rule requires additional information in opt-out notices. Section 680.23(a)(1)(i) provides that all opt-out notices must identify, by name, the affiliate(s) that is providing the notice. A group of affiliates may jointly provide the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies. Acceptable ways of identifying the multiple affiliates providing the notice include stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. A representation that the notice is provided by ''the ABC banking, credit card, insurance, and securities companies'' applies to all companies in those categories, not just some of those companies. But if the affiliates providing the notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates. For example, if the affiliates providing the notice do business under both the ABC name and the XYZ name, then the notice could list each affiliate by name or indicate that the notice is being provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies.''

Section 680.23(a)(1)(ii) provides that an opt-out notice must contain a list of the affiliates or types of affiliates covered by the notice. The notice may apply to multiple affiliates and to companies that become affiliates after the notice is provided to the consumer. The rule for identifying the affiliates covered by the notice is substantially similar to the rule for identifying the affiliates providing the notice in § 680.23(a)(1)(i), as described in the previous paragraph.

Sections 680.23(a)(1)(iii)-(vii) respectively require the opt-out notice to include the following: a general description of the types of eligibility information that may be used to make solicitations to the consumer; a statement that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer; a statement that the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires; if the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, a statement that the consumer who has chosen to limit marketing offers does not need to act again until the consumer receives a renewal notice; and a reasonable and simple method for the consumer to opt out. The statement described in § 680.23(a)(1)(vi) regarding consumers who may have previously opted out does not apply to the model privacy form that the Commission is developing in a separate rulemaking. Appropriate use of the model forms in Appendix C will satisfy these content requirements.

The Commission continues to believe that the opt-out notice must specify the length of the opt-out period, if one is provided. However, an institution that subsequently chooses to increase the duration of the opt-out period that it previously disclosed or honor the opt-out in perpetuity has no obligation to provide a revised notice to the consumer. In that case, the result is the same as if the institution established a five-year opt-out period and then did not send a renewal notice at the end of that period. A person receiving eligibility information from an affiliate would be prohibited from using that information to make solicitations to a consumer unless a renewal notice is first provided to the consumer and the consumer does not renew the opt-out. So long as no solicitations are made using eligibility information received from an affiliate, there would be no violation of the statute or regulation for failing to send a renewal notice in this situation.

Joint Notice

Proposed § 680.24(c) permitted a person subject to this rule to provide a joint opt-out notice with one or more of its affiliates that are identified in the notice, so long as the notice was accurate with respect to each affiliate jointly issuing the notice. Under the proposal, a joint notice would not have to list each affiliate participating in the joint notice by its name, but could state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.''

One commenter believed that individually listing each company could result in long and confusing notices. This commenter suggested revising the rule to permit the generic identification of the types of affiliates by whom eligibility information may be used to make solicitations and to allow the notice to apply to entities that become affiliates after the notice is sent.

In the final rule, the separate joint notice provision has been eliminated. Instead, the final rule incorporates the joint notice option into the provisions that address which affiliates may provide the opt-out notice and the contents of the notice.

Joint relationships

The proposal addressed joint relationships in the section dealing with delivery of opt-out notices. Proposed § 680.24(d) set out a rule that would apply when two or more consumers jointly obtain a product or service from a person subject to the rule (referred to in the proposed regulation as ''joint consumers''), such as a joint credit card account. It also provided several examples. Under the proposal, a person subject to this rule could provide a single opt-out notice to joint accountholders. The notice would have

had to indicate whether the person would consider an opt-out by a joint accountholder as an opt-out by all of the associated accountholders, or whether each accountholder would have to opt out separately. The person could not require all accountholders to opt out before honoring an opt-out direction by one of the joint accountholders. Because section 624 of the FCRA deals with the use of information for marketing by affiliates, rather than the sharing of information among affiliates, comment was requested on whether information about a joint account should be allowed to be used for making solicitations to a joint consumer who has not opted out.

Some commenters supported the flexible approach proposed by the Commission for dealing with joint accounts and notice to joint accountholders. One commenter suggested providing additional flexibility to enable consumers to opt out in certain circumstances, such as when eligibility information from a joint account is involved, but not in others, such as when eligibility information from an individual account is involved. Another commenter, however, believed that the provisions regarding joint relationships may not be appropriate for the affiliate marketing rule because section 624 relates to the use of information for marketing to a particular consumer, not to the sharing of information among affiliates. Consumer groups urged the Commission to prohibit the use of eligibility information about a joint account for making solicitations to a consumer who has not opted out if the other joint consumer on the account has opted out.

The Commission has renumbered the provision addressing joint relationships as § 680.23(a)(2) in the final rule. The Commission has deleted the example of joint relationships from the final rule because it addressed, in part, the sharing of information, rather than the use of information. The Commission has made other revisions to enhance the readability of this provision. The revised provision is substantively similar to the joint relationships provision of the GLBA privacy rule, except to the extent that rule refers to the sharing of information among affiliates.

The Commission believes that different issues may arise with regard to providing a single opt-out notice to joint consumers in the context of this rule, which focuses on the *use* of information, compared to issues that may arise with regard to providing such a notice in the context of other privacy rules that focus on the *sharing* of information. For example, a consumer may opt out with respect to affiliate marketing in connection with an individually-held account, but not opt out with respect to affiliate marketing in connection with a joint relationship. In that case, it could be challenging to identify which consumer information may and may not be used by affiliates to make solicitations to the consumer. Nevertheless, the final rule permits persons providing opt-out notices to consumers to provide a single opt-out notice to joint consumers.

Alternative Contents

Proposed § 680.21(d) provided that, where an institution elects to give consumers a broader right to opt out of marketing than is required by this part, the institution would have the ability to modify the contents of the opt-out notice to reflect accurately the scope of the opt-out right it provides to consumers. This section also noted that proposed Appendix A provided a model form that may be helpful for institutions that wish to allow consumers to opt out of all marketing from the institution and its affiliates, but use of the model form is not required. Commenters generally favored the flexibility afforded by this provision. The Commission has renumbered the provision addressing alternative contents as § 680.23(a)(3) in the final rule, but otherwise adopted it as proposed.

Model Notices

Section 680.23(a)(4) in the final rule states that model notices are provided in Appendix C of Part 698, renumbered from Appendix A of Part 680. The Commission has provided these model notices to facilitate compliance with the rule. However, the final rule does not require use of the model notices.

Consolidated and Equivalent Notices

Proposed § 680.27 provided that an opt-out notice required by this part could be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the FCRA and the notice required by title V of the GLBA. In addition, a notice or other disclosure that was equivalent to the notice required by this part, and that was provided to a consumer together with disclosures required by any other provision of law, would satisfy the requirements of this part. The proposal specifically requested comment on the consolidation of the affiliate marketing notice with the GLBA privacy notice and the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) of the FCRA.

Commenters generally supported the proposed provision. Several commenters believed it was probable that most institutions would want to provide the affiliate marketing opt-out notice with their existing GLBA privacy notice to reduce compliance costs and minimize consumer confusion. One commenter believed that institutions would be less likely to include the opt-out notice as part of their annual GLBA privacy notice because section 214 does not have an annual notice requirement.

The Commission has moved the provisions addressing consolidated and equivalent notices to the section addressing the contents of the notice and renumbered those provisions as §§ 680.23(b) and (c) respectively in the final rule. Otherwise, those provisions have been adopted as proposed with one exception. The provision on equivalent notices clarifies that an equivalent notice satisfies the requirements of § 680.23—not the entire part—because the part addresses many issues besides the content of the notice, such as delivery and renewal of opt-outs. The Commission believes that these provisions are related to the contents of the notice and should therefore be included in this section.

The Commission encourages consolidation of the affiliate marketing opt-out notice with the GLBA privacy notice, including the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) of the FCRA, so that consumers receive a single notice they can use to review and exercise all privacy opt-outs. Consolidation of these notices, however, presents special issues. For example, the affiliate marketing opt-out may be limited to a period of at least five years, subject to renewal, whereas the GLBA privacy and FCRA section 603(d)(2)(A)(iii) opt-out notices are not time-limited. This difference, if applicable, must be made clear to the consumer. Thus, if a consolidated notice is used and the affiliate marketing opt-out is limited in duration, the notice must inform consumers that if they previously opted out, they do not need to opt out again until they receive a renewal notice when the opt-out expires or is about to expire. In addition, as discussed more fully below, the Commission has developed a model privacy form that includes the affiliate marketing opt-out. The Commission expects that once published in final form, use of the model privacy form will satisfy the requirement to provide an affiliate marketing opt-out notice.

Section 680.24 Reasonable Opportunity to Opt Out

Section 680.22(a) of the proposal provided that before a receiving affiliate could use eligibility information to make or send solicitations to the consumer, the communicating affiliate would have to provide the consumer with a reasonable opportunity to opt out following delivery of the opt-out notice. Given the variety of circumstances in which institutions must provide a reasonable opportunity to opt out, the proposal construed the requirement for a reasonable opportunity to opt out as a general test that would avoid setting a mandatory waiting period in all cases.

The proposed rule would not have required institutions subject to the rule to disclose how long a consumer would have to respond to the opt-out notice before eligibility information communicated to affiliates could be used to make or send solicitations to the consumer, although institutions would have the flexibility to include such disclosures in their notices. In this respect, the proposed rule was consistent with the GLBA privacy rule.

Industry commenters generally supported the Commission's approach of treating the requirement for a reasonable opportunity to opt out as a general test that would avoid setting a mandatory waiting period. NAAG, on the other hand, believed that the Commission should set a mandatory waiting period of at least 45 days from the date of mailing or other transmission of the notice because consumers may be ill, away from home, or otherwise unable to respond to correspondence promptly.

Industry commenters generally supported the Commission's decision not to require the disclosure of how long a consumer would have to respond to the opt-out notice before eligibility information could be used to make or send solicitations to the consumer. Consumer groups believed that consumers should be told how long they have to respond to the notice before eligibility information could be used by affiliates to make or send solicitations and that they may exercise their right to opt out at any time.

The Commission has renumbered the section addressing a reasonable opportunity to opt out as § 680.24 in the final rule and revised it. Section 680.24(a) of the final rule retains the approach of construing the requirement for a reasonable opportunity to opt out as a general test that avoids setting a mandatory waiting period in all cases. Given the variety of circumstances in which a reasonable opportunity to opt out must be provided, the Commission believes that the appropriate time to permit solicitations may vary depending upon the circumstances. A general standard provides flexibility to allow a person to use eligibility information it receives from an affiliate to make solicitations at an appropriate point in time that may vary depending upon the circumstances, while assuring that the consumer is given a realistic opportunity to prevent such use of this information. In the final rule, the Commission has retained the approach of not requiring affiliate marketing opt-out notices to disclose how long a consumer has to respond before eligibility information may be used to make solicitations to the consumer or that consumers may exercise their right to opt out at any time. However, an institution may, at its option, add this information to its opt-out notice.

Section 680.22(b) of the proposal provided examples to illustrate what would constitute a reasonable opportunity to opt out. The proposed examples would have provided a generally applicable safe harbor for opt-out periods of 30 days. As explained in the supplementary information to the proposal, although 30 days would be a safe harbor, a person subject to this requirement could decide, at its option, to give consumers more than 30 days in which to decide whether or not to opt out. A shorter waiting period could be adequate in certain situations depending on the circumstances.

Proposed §680.22(b)(1) contained an example of a reasonable opportunity to opt out when the notice was provided by mail. Proposed § 680.22(b)(2) contained an example of a reasonable opportunity to opt out when the notice was provided by electronic means. The proposed examples were consistent with examples used in the GLBA privacy rule.

Proposed § 680.22(b)(3) contained an example of a reasonable opportunity to opt out where, in a transaction conducted electronically, the consumer was required to decide, as a necessary part of proceeding with the transaction, whether or not to opt out before completing the transaction, so long as the institution provided a simple process at the Internet Web site that the consumer could use at that time to opt out. In this example, the opt-out notice would automatically be provided to the consumer, such as through a non-bypassable link to an intermediate Web page, or ''speedbump.'' The consumer would be given a choice of either opting out or not opting out at that time through a simple process conducted at the Web site. For example, the consumer could be required to check a box right at the Internet Web site in order to opt out or decline to opt out before continuing with the transaction. However, this example would not cover a situation where the consumer was required to send a separate e-mail or visit a different Internet Web site in order to opt out.

Proposed § 680.22(b)(4) illustrated that including the affiliate marketing opt-out notice in a notice under the GLBA would satisfy the reasonable opportunity standard. In such cases, the consumer would be allowed to exercise the opt-out in the same manner and would be given the same amount of time to exercise the opt-out as is provided for any other opt-out provided in the GLBA privacy notice.

Proposed § 680.22(b)(5) illustrated how an ''opt-in'' could meet the requirement to provide a reasonable opportunity to opt out. Specifically, if an institution has a policy of not allowing its affiliates to use eligibility information to market to consumers without the consumer's affirmative consent, providing the consumer with an opportunity to ''opt in'' or affirmatively consent to such use would constitute a reasonable opportunity to opt out. The supplementary information clarified that the consumer's affirmative consent must be documented and that a pre-selected check box would not evidence the consumer's affirmative consent.

Some industry commenters supported the proposed 30-day safe harbor and the examples illustrating the safe harbor. Other industry commenters, however, expressed concern that the 30-day safe harbor would become the mandatory minimum waiting period in virtually all cases, particularly because of the risk of civil liability. For this reason, some industry commenters objected to the use of examples altogether and urged that the Commission delete the proposed examples. Other industry commenters asked the Commission to include only the examples from the GLBA.

Consumer groups believed that the safe harbor should be 45 days, rather than 30 days. These commenters believed that 45 days was necessary in part to account for the time consumed in mail deliveries and in part to avoid penalizing consumers who are away from home for vacation or illness.

Regarding the specific examples, a few commenters objected to the example in proposed § 680.22(b)(2), stating that the acknowledgment of receipt requirement would be inconsistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). One of

these commenters believed this requirement amounted to an opt-in for electronic notices. Several commenters believed that the example in proposed § 680.22(b)(3) for requesting the consumer to opt out as a necessary step in proceeding with an electronic transaction should not be limited to electronic transactions, but should be expanded to apply to all transaction methods. A number of commenters believed that the example in proposed § 680.22(b)(5) should either be deleted or, alternatively, should not refer to ''affirmative'' consent. These commenters noted that the example in proposed § 680.22(b)(4) allowed a person to satisfy the reasonable opportunity standard by permitting the consumer to exercise the opt-out in the same manner and giving the consumer the same amount of time to exercise the opt-out as provided in the GLBA privacy notice and that the GLBA rule did not require ''affirmative'' consent.

The Commission has renumbered the examples of a reasonable opportunity to opt out as § 680.24(b) in the final rule, and revised them as discussed below. The Commission believes the examples are helpful in illustrating what constitutes a reasonable opportunity to opt out.

The generally applicable 30-day safe harbor is retained in the final rule. The Commission believes that providing a generally applicable safe harbor of 30 days is helpful because it affords certainty to entities that choose to follow the 30-day waiting period. Although 30 days is a safe harbor in all cases, a person providing an opt-out notice may decide, at its option, to give consumers more than 30 days in which to decide whether or not to opt out. A shorter waiting period could be adequate in certain situations, depending on the circumstances, in accordance with the general test for a reasonable opportunity to opt out. The use of examples and a 30-day safe harbor is consistent with the approach followed in the GLBA privacy rule. However, the Commission believes that the examples in this rule should differ to some extent from the examples in the GLBA privacy rule because the affiliate marketing opt-out requires a one-time, not an annual, notice. Further, the affiliate marketing notice may, but need not, be included in the GLBA privacy notice.

In the final rule, the Commission has retained the example of a reasonable opportunity to opt out by mail with revisions for clarity. Commenters had no specific objections to this example.

The Commission has revised the example of a reasonable opportunity to opt out by electronic means and divided it into two subparts in the final rule to illustrate the different means of delivering an electronic notice. The example illustrates that for notices provided electronically, such as by posting the notice at an Internet Web site at which the consumer has obtained a product or service, a reasonable opportunity to opt out would include giving the consumer 30 days after the consumer acknowledges receipt of the electronic notice to opt out by any reasonable means. The acknowledgment of receipt aspect of this example is consistent with an example in the GLBA privacy regulation. The example also illustrates that for notices provided by e-mail to a consumer who had agreed to receive disclosures by e-mail from the person sending the notice, a reasonable opportunity to opt out would include giving the consumer 30 days after the e-mail is sent to elect to opt out by any reasonable means. The Commission does not believe that consumer acknowledgment is necessary where the consumer has agreed to receive disclosures by e-mail.

The Commission has determined that the electronic delivery of affiliate marketing opt-out notices does not require consumer consent in accordance with the E-Sign Act because neither section 624 of the FCRA nor this final rule requires that the notice be provided in writing. Thus, the Commission does not believe that the acknowledgment of receipt trigger is beyond the scope of their interpretive authority. Persons that provide affiliate marketing opt-out notices under this part electronically may do so pursuant to the agreement of the consumer, as specified in this rule, or in accordance with the requirements of the E-Sign Act.

The Commission believes that the example of a consumer who is required to opt out as a necessary part of proceeding with the transaction should not be limited to electronic transactions. However, rather than revising the electronic transactions example, the Commission has retained the electronic transactions example in § 680.24(b)(3) and added a new example for in-person transactions in § 680.24(b)(4). Together, these examples illustrate that an abbreviated opt-out period is appropriate when the consumer is given a ''yes'' or ''no'' choice and is not permitted to proceed with the transaction unless the consumer makes a choice. For in-person transactions, consumers could be provided a form with a question that requires the consumer to write a ''yes'' or ''no'' to indicate their opt-out preference or a form that contains two blank check boxes: one that allows consumers to indicate that they want to opt out and one that allows consumers to indicate that they do not want to opt out.

In the final rule, the Commission has retained the example of including the opt-out notice in a privacy notice in § 680.24(b)(5) as consistent with the statutory requirement that the Commission consider methods for coordinating and combining notices. The Commission has deleted the example of providing an opt-in as a form of opting out as unnecessary and confusing.

Section 680.25 Reasonable and Simple Methods of Opting Out

Section 680.23 of the proposal set forth reasonable and simple methods of opting out. This section generally tracked the examples of reasonable opt-out means from § 313.7(a)(2)(ii) of the GLBA privacy regulation with certain revisions to give effect to Congress' mandate that methods of opting out be simple. For instance, proposed § 680.23(a)(2) referred to including a self-addressed envelope with the reply form and opt-out notice. The Commission also contemplated that a toll-free telephone number would be adequately designed and staffed to enable consumers to opt out in a single phone call.

Proposed § 680.23(b) set forth methods of opting out that are not reasonable and simple, such as requiring the consumer to write a letter to the institution or to call or write to obtain an opt-out form rather than including it with the notice. This section generally tracked the examples of unreasonable opt-out means from § 313.7(a)(2)(iii) of the GLBA privacy rule. In addition, the proposal contained an example of a consumer who agrees to receive the opt-out notice in electronic form only, such as by electronic mail or by using a process at a Web site. Such a consumer should not be required to opt out solely by telephone or paper mail.

Many industry commenters asked the Commission to clarify that the examples are not the only ways to comply with the rule. These commenters believed that, as drafted, the proposal could be interpreted as an exclusive rule, rather than as examples. These commenters asked the Commission to make clear in the final rule that the methods set out in the rule are examples and do not exclude other reasonable and simple methods of opting out. A few industry commenters believed that the final rule should not include any examples of methods of opting out because of the potential for civil liability.

Many industry commenters also urged the Commission to use the same examples used in the GLBA privacy rule. These commenters did not believe that Congress would allow coordinated and consolidated notices, but require different methods of opting out. For instance, these commenters recommended deleting the reference to a self-addressed envelope because there is no such reference in the GLBA privacy rule. One commenter noted that its experience with self-addressed envelopes was negative because consumers often used the envelopes for other purposes resulting in misdirected communications. Industry commenters also objected to requiring institutions to provide an electronic opt-out mechanism to a consumer who agrees to receive an opt-out notice in electronic form. These commenters believed this example was unjustified and inconsistent with the GLBA privacy rule. Commenters also indicated that some institutions may not have the technical capabilities to accept electronic opt-outs. Several commenters recommended that the Commission clarify that an institution is not obligated to honor opt-outs submitted through means other than those designated by the institution.

Consumer groups generally believed that the proposal appropriately tracked the examples in the GLBA privacy regulation with revisions to give effect to Congress' mandate that methods of opting out be simple. These commenters believed, however, that the proposal was inadequate because it provided examples instead of requiring the use of certain methods. These commenters believed that the final rule should require self-addressed envelopes and require that toll-free numbers be adequately designed and staffed to enable consumers to opt out in a single phone call. According to these commenters, inadequate and poorly trained staff has been a shortcoming of the GLBA opt-out procedures. These commenters also recommended that consumers be given the opportunity to opt out by a simple check box on payment coupons. Finally, these commenters asked the Commission to clarify that the federal standard is a floor and that if the notice is combined with other choices made available under other federal and state laws, the most consumer-friendly means for opting out should apply.

The Commission has renumbered the section addressing reasonable and simple methods of opting out as § 680.25 in the final rule, and revised it as discussed below. The Commission has restructured this section to include a general rule and examples in separate paragraphs (a) and (b) respectively. This revision clarifies that the specific methods identified in the rule are examples, not an exhaustive list of permissible methods.

The Commission believes that including examples in § 680.25(b) is helpful. However, the Commission declines to adopt the GLBA examples without change. Section 624 of the FCRA requires the Commission to ensure that the consumer is given reasonable and *simple* methods of opting out. The GLBA did not require simple methods of opting out. The Commission believes that the methods of opting out can, in some instances, be simpler than some of the reasonable methods illustrated in the GLBA privacy rule. To effectuate the statutory mandate that consumers have simple methods of opting out, the Commission has modified, for purposes of this rulemaking, some of the examples of reasonable methods of opting out that were used in the GLBA privacy regulation.

Most of the examples in the final rule are substantially similar to those in § 680.23(a) and (b) of the proposal with revisions for clarity. The example in § 680.25(b)(1)(ii) has been revised to reflect the Commission's understanding that the reply form and self-addressed envelope would be included together with the opt-out notice. As in the proposal, the Commission contemplates that a toll-free telephone number that consumers may call to opt out, as illustrated by the example in § 680.25(b)(1)(iv), would be adequately designed and staffed to enable consumers to opt out in a single phone call. In setting up a toll-free telephone number that consumers may use to exercise their opt-out rights, institutions should minimize extraneous messages directed to consumers who are in the process of opting out.

One new example in § 680.25(b)(1)(v) illustrates that reasonable and simple methods include allowing consumers to exercise all of their opt-out rights described in a consolidated opt-out notice that includes the GLBA privacy, FCRA affiliate sharing, and FCRA affiliate marketing opt-outs, by a single method, such as by calling a single toll-free telephone number. This example furthers the statutory directive to the Commission to ensure that notices and disclosures may be coordinated and consolidated. The final rule also clarifies the example renumbered as § 680.25(b)(2)(iii) to illustrate that it is not reasonable or simple to require a consumer who receives the opt-out notice in electronic form, such as through posting at an Internet Web site, to opt out solely by paper mail or by visiting a different Web site without providing a link to that site.

Section 680.25(c) has been added to clarify that each consumer may be required to opt out through a specific means, as long as that means is reasonable and simple for that consumer. This new section corresponds to a provision in the GLBA privacy rule, 16 CFR § 313.7(a)(2)(iv).

Section 680.26 Delivery of Opt-out Notices

General rule and examples

Section 680.24 of the proposal addressed the delivery of opt-out notices. Proposed § 680.24(a) provided that an institution would have to deliver an opt-out notice so that each consumer could reasonably be expected to receive actual notice. This standard would not have required actual notice. The supplementary information to the proposal also clarified that, for opt-out notices delivered electronically, the notices could be delivered either in accordance with the electronic disclosure provisions in this part or in accordance with the E-Sign Act. For example, the institution could e-mail its notice to a consumer who agreed to the electronic delivery of information or provide the notice on its Internet Web site for a consumer who obtained a product or service electronically from that Web site. Commenters generally supported the reasonable expectation of actual notice standard.

Proposed § 680.24(b) provided examples to illustrate what would constitute delivery of an opt-out notice. Commenters expressed concern about the electronic notice example in proposed paragraph (b)(1)(iii). Consumer groups objected to this example by pointing to a growing trend in which companies require consumers to agree to electronic notices if they conduct business on an Internet Web site. These commenters believed that there was nothing to ensure that the notice would be clearly accessible to consumers on the Web site. These commenters believed that, at a minimum, the Commission should require the notice to be sent to the consumer's e-mail address, rather than posted to an Internet Web site, where the consumer has expressly opted in to the electronic delivery of notices. Some industry commenters objected to the acknowledgment of receipt requirement in this example as inconsistent with the E-Sign Act. One of these commenters urged the Commission to explicitly incorporate the E-Sign Act into the

requirements for delivering opt-out notices.

The Commission has renumbered the general rule regarding delivery of opt-out notices as § 680.26(a) in the final rule and divided the examples into positive and negative examples in §§ 680.26(b) and (c) respectively. In the final rule, the Commission has retained the reasonable expectation of actual notice standard, which does not require the institution to determine if the consumer actually received the opt-out notice. For example, mailing a printed copy of the opt-out notice to the last known mailing address of a consumer satisfies the requirement to deliver the opt-out notice so that there is a reasonable expectation that the consumer has received actual notice.

The Commission has revised some of the examples of a reasonable expectation of actual notice for electronic notices. The new example in § 680.26(b)(3) illustrates that the reasonable expectation of actual notice standard would be satisfied by providing notice by e-mail to a consumer who has agreed to receive disclosures by e-mail from the person providing the notice. The Commission reiterates that an acknowledgment of receipt is not necessary for a notice provided by e-mail to such a consumer. Conversely, the example in § 680.26(c)(2) illustrates that the reasonable expectation of actual notice standard would not be satisfied by providing notice by e-mail to a consumer who has not agreed to receive disclosures by e-mail from the person providing the notice.

The revised example in § 680.26(b)(4) illustrates that for a consumer who obtains a product or service electronically, the reasonable expectation standard would be satisfied by posting the notice on the Internet Web site at which the consumer obtains such product or services and requiring the consumer to acknowledge receipt of the notice. Conversely, the new example in § 680.26(c)(3) illustrates that the reasonable expectation standard would not be satisfied by posting the notice on the Internet Web site without requiring the consumer to acknowledge receipt of the notice. As discussed above, the Commission has determined that the electronic delivery of opt-out notices does not require consumer consent in accordance with the E-Sign Act because neither section 624 of the FCRA nor the final rule require that the notice be provided in writing. Thus, requiring an acknowledgment of receipt is within the scope of the Commission's interpretive authority. This example is also consistent with an example in the GLBA privacy rule and seems appropriate where the notice is posted at an Internet Web site.

The Commission declines to require the delivery of electronic notices by e-mail. Concerns about the security of e-mail, especially phishing, make it inappropriate to require e-mail as the only permissible form of electronic delivery for opt-out notices.

Section 680 .27 Renewal of Opt-out

Proposed § 680.26 described the procedures for extension of an opt-out. Proposed § 680.26(a) provided that a receiving affiliate could not make or send solicitations to the consumer after the expiration of the opt-out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt-out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt-out, and the consumer does not extend the opt-out. Thus, if an extension notice was not provided to the consumer, the opt-out period would continue indefinitely. Proposed § 680.26(b) provided that each opt-out extension would have to be effective for a period of at least five years.

Proposed § 680.26(c) addressed the contents of a clear, conspicuous, and concise extension notice and provided flexibility to comply in either of two ways. Under one approach, the notice would disclose the same items required to be disclosed in the initial opt-out notice, along with a statement explaining that the consumer's prior opt-out has expired or is about to expire, as applicable, and that if the consumer wishes to keep the consumer's opt-out election in force, the consumer must opt out again. Under a second approach, the extension notice would provide: (1) that the consumer previously elected to limit an affiliate from using eligibility information about the consumer that it obtains from the communicating affiliate to make or send solicitations to the consumer; (2) that the consumer's election has expired or is about to expire, as applicable; (3) that the consumer may elect to extend the consumer's previous election; and (4) a reasonable and simple method for the consumer to opt out. The supplementary information to the proposal clarified that institutions would not need to provide extension notices if they treated the consumer's opt-out election as valid in perpetuity, unless revoked by the consumer.

Proposed § 680.26(d) addressed the timing of the extension notice and provided that an extension notice could be given to the consumer either a reasonable period of time before the expiration of the opt-out period, or any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer. The Commission did not propose to set a fixed time for what would constitute a reasonable period of time before the expiration of the opt-out period to send an extension notice because a reasonable period of time may depend upon the amount of time afforded to the consumer for a reasonable opportunity to opt out, the amount of time necessary to process opt-outs, and other factors. Proposed § 680.26(e) made clear that sending an extension notice to the consumer before the expiration of the opt-out period does not shorten the five-year opt-out period.

A few industry commenters objected to the fact that the contents of the extension notice would differ from the contents of the initial notice by requiring that the extension notice inform the consumer that the consumer's prior opt-out has expired or is about to expire, as applicable, and that the consumer must opt out again to keep the opt-out election in force. These commenters argued that the added disclosure requirement would be costly and provide little benefit to consumers. One commenter maintained that the added disclosure requirement would make it difficult, if not impossible, to combine the extension notice with the GLBA privacy notice. Commenters also maintained that the language of the statute, particularly section 624(a)(1), contemplates that the same notice would satisfy the requirements for the initial and extension notices. Consumer groups and NAAG recommended that the Commission define a ''reasonable opportunity'' to extend the opt-out as a period of at least 45 days before shared eligibility information is used to make solicitations to the consumer.

The Commission has renumbered the provisions addressing the extension or renewal of opt-outs as § 680.27 in the final rule and revised them. For purposes of clarity, the final rule refers to a ''renewal'' notice, rather than an ''extension'' notice.

Section 680.27(a) contains the general rule, which provides that after the opt-out period expires, a person may not make solicitations based on eligibility information received from an affiliate to a consumer who previously opted out unless the consumer has been given a compliant renewal notice and a reasonable opportunity to opt out, and the consumer does not renew the opt-out. This section also clarifies that a

person can make solicitations to a consumer after expiration of the opt-out period if one of the exceptions in § 680.21(c) applies.

The Commission declines to set a fixed minimum time period for a reasonable opportunity to renew the opt-out as unnecessary and inconsistent with the approach taken elsewhere in this rule and in the GLBA privacy rule. The provision regarding the duration of the renewed opt-out elicited no comment, and it has been retained in § 680.27(a)(2) of the final rule.

Section 680.27(a)(3) identifies the affiliates who may provide the renewal notice. A renewal notice must be provided either by the affiliate that provided the previous opt-out notice or its successor, or as part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice. This rule balances the Commission's goal of ensuring that the notice is provided by an entity known to the consumer with a recognition that flexibility is required to account for changes in the corporate structure that may result from mergers and acquisitions, corporate name changes, and other events.

The Commission recognizes that the content of the extension or renewal notice differs from the content of the initial notice. Nothing in the statute, however, requires identical content in the initial and renewal notices. Moreover, the statute requires the Commission to provide specific guidance to ensure that opt-out notices are clear, conspicuous, and concise. It is unreasonable to expect consumers, upon receipt of a renewal notice, to remember that they previously opted out five years ago (or longer) or, even if they do remember, to know that they must opt out again in order to renew their opt-out decision. Therefore, to ensure that the renewal notice is meaningful, the Commission concludes that the renewal notice must remind the consumer that he or she previously opted out, inform the consumer that the opt-out has expired or is about to expire, and advise the consumer that he or she must opt out again to renew the opt-out and continue to limit solicitations from affiliates. Under the final rule, the renewal notice can state that ''the consumer's election has expired or is about to expire.'' The Commission has deleted the words ''as applicable'' so that the notice does not have to be tailored to differentiate consumers for whom the election ''has expired'' from those for whom the election ''is about to expire.''

The Commission is not persuaded that the additional content of the renewal notice will have any impact on the ability to combine the opt-out notice with the GLBA privacy notice. Even if the language of the renewal notice were identical to the initial notice, it still could be difficult to avoid honoring a consumer's opt-out in perpetuity if the affiliate marketing opt-out notice is incorporated into the GLBA privacy notice. Privacy notices typically state that if a consumer has previously opted out, it is not necessary for the consumer to opt out again. This statement would be accurate with respect to the affiliate marketing opt-out only if the consumer's opt-out is honored in perpetuity. It would not be accurate, however, if the affiliate marketing opt-out is effective only for a limited period of time, subject to renewal by the consumer at intervals of five years or longer. Thus, if the affiliate marketing opt-out notice was consolidated with GLBA privacy notices and was effective for a limited period of time, the privacy notices would have to be modified to make clear that statements that the consumer does not have to opt out again do not apply to the affiliate marketing renewal notice. Therefore, the Commission does not believe that requiring a renewal notice to contain information not included in an initial notice will significantly affect the ability to incorporate the affiliate marketing opt-out notice into GLBA privacy notices because consolidation of the notices is most likely to occur when the affiliate marketing opt-out will be honored in perpetuity. Entities that prefer not to provide renewal notices may do so by honoring the consumer's opt-out in perpetuity. The contents of the renewal notice are adopted in § 680.27(b) with revisions that incorporate the changes to § 680.23, as discussed above. Section 680.27(b) of the final rule also omits the alternative contents set forth in the proposal, which the Commission now believes would be unnecessarily duplicative.

Proposed § 680.26(d) addressed the timing of the extension or renewal notice and elicited no comment. The Commission has renumbered this provision as § 680.27(c) in the final rule and adopted it with technical revisions. As explained in the supplementary information to the proposal, providing the renewal notice a reasonable period of time before the expiration of the opt-out period would enable institutions to begin marketing to consumers who do not renew their opt-out upon expiration of the opt-out period. But giving a renewal notice too far in advance of the expiration of the opt-out period may confuse consumers. The Commission will deem a renewal notice provided on or with the last annual privacy notice required by the GLBA privacy provisions sent to the consumer before the expiration of the opt-out period to be reasonable in all cases.

Proposed § 680.26(e) regarding the effect of an extension or renewal notice on the existing opt-out period elicited no comment. The Commission has renumbered this provision as § 680.27(d) in the final rule, and adopted it with technical changes.

Section 680.28 Effective Date, Compliance Date, and Prospective Application

Effective Date and Compliance Date

Consistent with the requirements of section 624 of the FCRA, the proposal indicated that the final rule would become effective six months after the date on which it would be issued in final form. The Commission requested comment on whether there was any need to delay the mandatory compliance date beyond the effective date specifically to permit institutions to incorporate the affiliate marketing opt-out notice into their next annual GLBA privacy notice.

Most industry commenters believed that the Commission should delay the mandatory compliance date until some time after the effective date of the final rule. These commenters suggested various periods for delaying the mandatory compliance date ranging from three months to more than 24 months. Common recommendations were for a delayed mandatory compliance date of six, 12, or 18 months.

Some of these commenters suggested a two-part mandatory compliance date consisting of a delayed mandatory compliance date of either three or six months for new accounts or for general application and a special mandatory compliance date for institutions that intend to consolidate their affiliate marketing opt-out notice with their GLBA privacy notice. Under this special mandatory compliance date, institutions would have to comply at the time they provide their next GLBA privacy notice following the effective date of the final rule or a date certain, whichever is earlier.

Industry commenters believed that a delayed mandatory compliance date was necessary in order to make significant changes to business practices and procedures, to implement necessary operational and systems changes, and to design and provide opt-out notices.

Industry commenters also noted that many institutions would like to send the affiliate marketing opt-out notice with their initial or annual GLBA privacy notices, both to minimize costs and to avoid consumer confusion. These commenters noted that many large institutions provide GLBA privacy notices on a rolling basis and that a delayed mandatory compliance date was necessary to enable institutions to introduce the affiliate marketing opt-out notice into this cycle. One large institution estimated that its first-year compliance costs would increase by a minimum of $660,000 if it was not able to consolidate the affiliate marketing opt-out notice with its GLBA privacy notice. A few industry commenters believed that Congress knew that an effective date is not necessarily the same as a mandatory compliance date because banking regulations commonly have effective dates and mandatory compliance dates that differ.

Consumer groups and NAAG believed that the effective date of the final rule should be the mandatory compliance date. These commenters believed that institutions have had time to prepare for compliance since the FACT Act became law in December 2003. Consumer groups believed that if institutions need more time to comply, affiliates should cease using eligibility information to make solicitations until the notice and opportunity to opt out is provided.

The final rule will become effective January 1, 2008. Consistent with the statute's directive that the Commission ensure that notices may be consolidated and coordinated, the mandatory compliance date is delayed to give institutions a reasonable amount of time to include the affiliate marketing opt-out notice with their initial and annual privacy notices. Accordingly, compliance with this part is required not later than October 1, 2008. The Commission believes that delaying the mandatory compliance date for approximately one year will give all institutions adequate time to develop and distribute opt-out notices and give most institutions sufficient time to develop and distribute consolidated notices if they choose to do so.

Prospective Application

Proposed § 680.20(e) provided that the provisions of this part would not apply to eligibility information that was received by a receiving affiliate prior to the date on which compliance with these regulations would be required. Some industry commenters supported this provision. Other industry commenters, however, believed that the proposed rule did not track the statutory language or reflect the intent of Congress. These commenters believed that the final rule should grandfather all information received by any financial institution or affiliate in a holding company prior to the mandatory compliance date, and not grandfather only that information received prior to the mandatory compliance date by a person that intends to use the information to make solicitations to the consumer. Some of these commenters recommended, in the alternative, that the Commission clarify that any information placed into a common database by an affiliate should be deemed to have been provided to an affiliated person if the Commission opts to retain the prospective application provision as proposed. These commenters argued that without such a clarification, affiliated companies would have to undertake the costly deconstruction of existing databases to ensure compliance.

In the final rule, the provision addressing prospective application has been renumbered as § 680.28(c), and revised. The Commission continues to believe that the better interpretation of the non-retroactivity provision is that it is tied to receipt of eligibility information by a person that intends to use the information to make solicitations to the consumer. The final rule clarifies, however, that a person is deemed to receive eligibility information from its affiliate when the affiliate places that information in a common database where it is accessible by the person, even if the person has not accessed or used that information as of the compliance date. For example, assume that an affiliate obtains eligibility information about a consumer as a result of having a pre-existing business relationship with that consumer. The affiliate places that information into a common database that is accessible to other affiliates before the mandatory compliance date. The final rule does not apply to that information, and other affiliates may use that information for marketing to the consumer. On the other hand, if the affiliate obtains eligibility information about the consumer before the mandatory compliance date, but does not either place that information into a common database that is accessible to other affiliates or otherwise provide that information to another affiliate before the mandatory compliance date, the final rule will apply to that eligibility information. Further, if the database is updated with new eligibility information after the mandatory compliance date, the final rule will apply to the new or updated eligibility information.

Appendix C

Appendix A of the proposal contained model forms to illustrate by way of example how institutions could comply with the notice and opt-out requirements of section 624 and the proposed regulations. Appendix A included three proposed model forms. Model Form A-1 was a proposed form of an initial opt-out notice. Model Form A-2 was a proposed form of an extension notice. Model Form A-3 was a proposed form that institutions may use if they offer consumers a broader right to opt out of marketing than is required by law.

The proposed model forms were designed to convey the necessary information to consumers as simply as possible. The Commission tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a readability score.[14] Proposed Model Form A-1 had a Flesch reading ease score of 53.7 and a Flesch-Kincaid grade level score of 9.9. Proposed Model Form A-2 had a Flesch reading ease score of 57.5 and a Flesch-Kincaid grade level score of 9.6. Proposed Model Form A-3 had a Flesch reading ease score of 69.9 and a Flesch-Kincaid grade level score of 6.7.

Commenters generally supported the proposed model forms. As noted above, some commenters had concerns about the content of the initial and renewal notices. Some industry commenters expressed concern about requiring the notice to specify the applicable time period and the consumer's right to renew the election once the opt-out expires. Industry commenters also suggested revising the language of the notice to refer either to ''financial'' information or ''credit eligibility'' information for clarity. One commenter suggested deleting the examples of the types of information shared with affiliates. Another commenter suggested rephrasing the model forms in the passive voice. One commenter encouraged the Commission to clarify that use of the model forms provides a safe harbor. Another commenter believed that the optional third paragraph of Model Form A-1 should be revised, or an alternate paragraph added, to provide guidance on how to

[14] The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written.

clearly disclose to consumers that the opt-out may not limit the sharing of contact information and other information that does not meet the definition of ''consumer report.''

Consumer groups and NAAG commended the Commission for reporting the Flesch reading ease score and Flesch-Kincaid grade-level score for each of the model forms. These commenters urged the Commission to modify the proposed rule to require that any person that does not use the model forms must provide a notice that achieves readability scores at least as good as the scores for the model forms. Consumer groups also suggested adding a sentence about providing the form annually to mitigate consumer confusion. These commenters also urged the Commission to adopt a short-form notice.

The Commission has revised and expanded the number of model forms to reflect changes made to the final rule. In addition, the model forms have been renumbered as Appendix C to Part 698. The Commission believes that model forms are helpful for entities that give notices and beneficial for consumers. The model forms are provided as stand-alone documents. However, some persons may choose to combine the opt-out notice with other consumer disclosures, such as the GLBA privacy notice. Creating a consolidated model form is beyond the scope of this rulemaking, but, as discussed above, institutions can combine the affiliate marketing opt-out notice with other disclosures, including the GLBA privacy notice.

On March 31, 2006, the FTC, Board, FDIC, NCUA, OCC, and SEC released a report entitled *Evolution of a Prototype Financial Privacy Notice*, prepared by Kleimann Communication Group, Inc., summarizing research that led to the development of a prototype short-form GLBA privacy notice. That prototype included an affiliate marketing opt-out notice. The prototype assumed that the notice would be provided by the affiliate that is sharing eligibility information. The Commission believes that providing model forms in this rule for stand-alone opt-out notices that may be used in a more diverse set of circumstances than a model privacy form is appropriate and consistent with efforts to develop a model privacy form. On March 29, 2007, the FTC, Board, FDIC, NCUA, OCC, OTS, SEC, and the Commodity Futures Trading Commission published for public comment in the **Federal Register** (72 FR 14940) a model privacy form that includes the affiliate marketing opt-out. Once such a notice is published in final form, use of the model privacy form will satisfy the requirement to provide an initial affiliate marketing opt-out notice.

The final rule includes five model forms. Model Form C-1 is the model for an initial notice provided by a single affiliate. Model Form C-2 is the model for an initial notice provided as a joint notice from two or more affiliates. Model Form C-3 is the model for a renewal notice provided by a single affiliate. Model Form C-4 is the model for a renewal notice provided as a joint notice from two or more affiliates. Model Form C-5 is a model for a voluntary ''no marketing'' opt-out.

The Commission tested each of the model forms using two widely-available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test. In conducting these tests, the Commission eliminated parenthetical text wherever possible, included the optional clauses, and substituted the names of fictional entities, for example, ABC Lender or the ABC group of companies, as the names of the relevant entities to ensure that the test results were not skewed by the inclusion of descriptive text that would not be included in actual opt-out notices. The results of these tests are summarized for each of the model forms in Table 1 below.

Although the Commission encourages the use of these tests as well as other types of consumer testing in designing opt-out notices, the Commission declines to adopt a prescriptive approach that requires notices to achieve certain scores under the Flesch reading ease or Flesch-Kincaid grade level tests. Some variation in readability scores is inevitable and may be caused by minor differences in the language of the notice, such as the name of the entity providing the notice or the types of information that may be used for marketing.

TABLE 1

	Flesch reading ease score	Flesch-Kincaid grade level score
Model Form C-1	50.2	11.5
Model Form C-2	51.7	11.5
Model Form C-3	54.6	9.7
Model Form C-4	54.2	9.8
Model Form C-5	81.3	3.8

As noted in the proposal, use of the model forms is not mandatory. However, appropriate use of the model forms provides a safe harbor. There is flexibility to use or not use the model forms, or to modify the forms, so long as the requirements of the regulation are met. For example, although several of the model forms use five years as the duration of the opt-out period, an opt-out period of longer than five years may be used and the longer time period substituted in the opt-out notices. Alternatively, the consumer's opt-out may be treated as effective in perpetuity and, if so, the opt-out notice should omit any reference to the limited duration of the opt-out period or the right to renew the opt-out.

The Commission has revised the model forms so that the disclosure regarding the duration of the opt-out may state that the opt-out applies either for a fixed number of years or ''at least 5 years.'' This revision permits institutions that use a longer opt-out period or that subsequently extend their opt-out period to rely on the model language. The model form also contains a reference to the consumer's right to revoke an opt-out. In addition, language has been added to the model forms to clarify that, with an opt-out of limited duration, a consumer does not have to opt out again until a renewal notice is sent.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501-3521, the Commission staff has submitted the final rule and a PRA Supporting Statement to the Office of Management and Budget (OMB) for review. As required by the PRA, the staff's annual burden estimates take into account the burden associated with the rule's reporting, recordkeeping, and third-party disclosure requirements.[15]

As set forth in the notice of proposed rulemaking (NPRM), the final rule likewise imposes disclosure requirements on certain affiliated companies subject to the Commission's jurisdiction. The final rule provides that if a company communicates certain information about a consumer (''eligibility information'') to an affiliate, the affiliate may not use that information to send solicitations to the consumer unless the consumer is given notice and an opportunity and a simple method to opt out of such use of the information and the consumer does not opt out. The final rule also contains model disclosures that companies may use to comply with the final rule's requirements.

The staff's estimates reflect the average amount of burden incurred by entities subject to the final rule, taking into account that some entities may not share eligibility information with

[15] 44 U.S.C. 3502(2); 5 CFR 1320.3(b)

affiliates for the purpose of making solicitations and other entities may choose to rely on the exceptions to the final rule's notice and opt-out requirements. In either of these cases, the notice would not be required, and the resulting burden would be zero. Moreover, the burden estimates take into account that a number of non-GLBA companies currently provide notices and opt-out choices voluntarily as a service to their customers. Since these entities already have systems and processes in place for providing the notice and implementing the opt-out, the resulting PRA burden under the final rule for such entities would be *de minimis*.

The staff's estimates assume a higher burden will be incurred during the first year of the OMB clearance period with a lesser burden incurred during the subsequent two years, since the notice is only required to be given once for a minimum period of at least five (5) years. The staff did not estimate the burden for preparing and distributing extension notices by persons that limit the duration of the opt-out time period because the minimum effective time period for the opt-out is five years while the relevant PRA clearance period is no more than three years. Moreover, entities providing the notice and opt-out may elect to have a longer opt-out period, for example, ten years, or to make the opt-out election effective in perpetuity.

The staff's labor cost estimates take into account: managerial and professional time for reviewing internal policies and determining compliance obligations; technical time for creating the notice and opt-out, in either paper or electronic form; incremental training; and clerical time for disseminating the notice and opt-out.[16] In addition, the staff's cost estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the cost of compliance. Further, the final rule gives entities flexibility to provide a single joint notice on behalf of some or all of its affiliates, which should further reduce the cost of compliance.

The Commission staff previously estimated in the NPRM that the total paperwork burden for the proposed rule over a standard three-year OMB grant of clearance would be 2,715,000 hours and $63,144,000 in labor costs for both GLBA and non-GLBA entities, cumulatively.[17] In preparation for this publication, staff has revisited those estimates, refining its analysis. There are no program changes from the NPRM that impact staff's prior PRA analysis. Rather, staff has adjusted its previously stated estimate of burden hours and the number of non-GLBA entities that may send the proposed affiliate marketing notice based on: (1) a refined numerical estimate of non-GLBA entities with affiliates under the Commission's jurisdiction and thus subject to the final rule; and (2) recognition that an entity need only give a notice once during the three-year clearance period. Thus, staff now estimates the total average annual burden hours and labor costs over the three-year clearance period to be 1,105,000 and $31,302,000, respectively, as further explained below.

The staff estimates that approximately 1.17 million (rounded) non-GLBA entities under the jurisdiction of the Commission have affiliates and would be affected by the final rule.[18] As in the NPRM, staff further estimates that there are an average of 5 businesses per family or affiliated relationship, and that the affiliated entities will choose to send a joint notice, as permitted by the final rule. Thus an estimated 233,400 (rounded) non-GLBA entities may send the new affiliate marketing notice. The staff estimates that the cumulative burden per non-GLBA entity will total 14 hours[19] over a three-year PRA clearance cycle, not *per* year, as previously set forth in the NPRM. Based on updated population data, the Commission staff estimates that the total burden for non-GLBA entities during the prospective three-year clearance period would be approximately 3,268,000 hours and associated labor costs would be approximately $92,247,000.[20] However, non-GLBA entities will give notice only once during a three-year clearance period. Thus, averaged annually over that span, estimated burden for non-GLBA entities is 1,089,000 hours and $30,749,000 in labor costs, rounded.[21]

As stated in the NPRM, the number of GLBA entities under the Commission's jurisdiction is 3,350.[22] As before, staff estimates that GLBA entities would incur 6 hours of paperwork burden during the first year of the clearance period,[23] given that the final rule provides model notices. This would thus approximate 20,000 hours, cumulatively, during the first year of a three-year OMB clearance period. Labor costs, as adjusted, would approximate $716,000.[24] Allowing for increased familiarity with procedure, the paperwork burden in ensuing years would decline, with GLBA entities each incurring 4 hours of annual burden[25] during the remaining two years of the clearance period. At an estimated 3,350 GLBA entities under the Commission's jurisdiction, this amounts to 13,400 hours and $472,000 in labor costs[26] in each of the ensuing two years. Thus, averaged over the three-year clearance period, the estimated annual burden for GLBA entities is 15,600 hours and $533,000 in labor costs.

Combining estimates for GLBA and non-GLBA entities, total average annual burden over a prospective three-year clearance period, is approximately 1,105,000 hours and $31,302,000 in labor costs, rounded. As noted in the NPRM, GLBA entities are already providing notices to their customers so there are no new capital or other non-labor costs, as this notice may be consolidated into their current notices. For non-GLBA entities, the final rule provides for simple and concise model forms that institutions may use to

[16] No clerical time was included in staff's burden analysis for GLBA entities as the notice would likely be combined with existing GLBA notices.

[17] 69 FR at 33335.

[18] This estimate is derived from an analysis of a database of U.S. businesses based on SIC codes for businesses that market goods or services to consumers, which included the following industries: transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services). This estimate excludes businesses not subject to the Commission's jurisdiction as well as businesses that do not use data or information subject to the rule.

[19] This estimate, as in the NPRM, is based on a projected apportionment of 7 hours managerial time, 2 hours technical time, and 5 hours of clerical assistance.

[20] The hourly rates are based on average annual Bureau of Labor Statistics National Compensation Survey data, June 2005 (with 2005 as the most recent whole year information available at the BLS Web site). *http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf* (Table 1.1), and further adjusted by a multiplier of 1.06426, a compounding for approximate wage inflation for 2005 and 2006, based on the BLS Employment Cost Index. The dollar total above is derived from the estimated 7 hours of managerial labor at $34.21 per hour; 2 hours of technical labor at $29.80 per hour; and 5 hours of clerical labor at $14.44 per hour—a combined $371.27—multiplied by 1.06426 (a combined $395.13)—for the estimated 233,400+ non-GLBA business families subject to the Rule.

[21] 3,268,000 hours ÷ 3 = 1,089,000; $92,247,000 ÷ 3 = $30,749,000.

[22] *See* 69 FR at 33334.

[23] This estimate is based on 5 hours of managerial time and 1 hour of technical time to execute the notice. As in the NPRM, staff excludes clerical time from the estimate because the notice likely would be combined with existing GLBA notices.

[24] 3,350 GLBA entities x ($34.21 x 5 hours) + ($29.80 x 1 hour)] x 1.06426 wage inflation multiplier. *See* note 20.

[25] This estimate, carried over from the NPRM, is based on 3 hours of managerial time and 1 hour of technical time.

[26] 3,350 GLBA entities x [($34.21 x 3 hours) + ($29.80 x 1 hour)] x 1.06426 wage inflation multiplier. *See* note 20.

comply. Thus, any capital or non-labor costs associated with compliance for these entities are negligible.

The Commission staff recognized that the amount of time needed for any particular entity subject to the proposed requirements may be higher or lower, but believes that the above stated averages are reasonable estimates. In arriving at these estimates, staff determined that many entities do not have affiliates and are not covered by section 214 of the FACT Act or the rule. Entities that have affiliates may choose not to engage in the sharing of certain information or marketing to consumers covered by section 214 of the FACT Act or the rule. Moreover, to minimize the compliance costs and burdens for entities, particularly small businesses, the final rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. Finally, the final rule gives covered entities flexibility to satisfy the notice and opt-out requirement by sending the consumer a free-standing opt-out notice or by adding the opt-out notice to the privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V of the GLBA. For covered persons that choose to prepare a free-standing opt-out notice, the time necessary to prepare it would be minimal because those persons could simply copy the model disclosure, making minor adjustments as indicated by it. Similarly, for covered persons that choose to incorporate the opt-out notice into their GLBA privacy notices, the time necessary to integrate them would be minimal.

In response to the PRA section of the NPRM, the Commission received one comment, from the Mortgage Bankers Association (''MBA''). The MBA expressed concern that the NPRM's burden estimates convey a misleading impression of the cost of compliance with the final rule.[27] The MBA's principal objection was that the cost estimates assume that the major cost is sending the disclosures, rather than processing any opt-out requests and ensuring that solicitations are not sent to consumers who have opted out or have not yet had a reasonable opportunity to do so. The MBA added that the NPRM's cost estimates did not reflect the costs associated with building compliance systems, such as costs attributed to significant database programming, coordination across business entities, legal and managerial review, employee training, and business process changes. As an example, the MBA stated that one of its members, a medium-sized mortgage banker, estimated that it would cost at least $5 million in direct costs to modify its data warehouse computer system to accommodate the opt-outs and to send disclosures to all of its customers, plus hundreds of thousands of dollars for indirect costs. The MBA stated that the NPRM did not consider the significant clerical effort needed to comply with the then-proposed rule. The MBA also stated that companies that currently provide GLBA privacy and FCRA affiliate sharing opt-out notices would still incur significant costs because: (1) in contrast to the GLBA, the new opt-out right applies to the sharing of information with affiliates; and (2) in contrast to the FCRA, the new opt-out right applies to transaction and experience information. Finally, the MBA stated that compliance with the then-proposed rule would be particularly difficult because software modifications and employee training will be required to ensure that both bank and mortgage company employees have access to consumers' transaction and experience information in order to service their accounts, but they are prevented from using such information to solicit business from consumers who have exercised their opt-out rights.

The Commission staff continues to believe that its estimate of the average amount of time to prepare and distribute an initial notice to consumers is reasonable. As a preliminary matter, the Commission staff notes that the PRA does not require an estimate all of the costs that may be associated with implementing the opt-out, but only the information collection costs. The annual burden estimates take into account the requisite burden associated with the reporting, recordkeeping, and third-party disclosure requirements, including any incremental training costs that may be associated with implementing the final rule's requirements. Further, the Commission's staff estimates are over-inclusive with respect to the number of entities that must comply with the rule. As stated earlier, many entities voluntarily provide consumers with the right to opt out of advertising by affiliates, and thus will not be subject to the final rule's requirements and attendant costs. The Commission continues to believe that institutions should be able to modify existing database systems and employee training programs, used to comply with the GLBA and FCRA notice and opt-out requirements, to meet the requirements of this final rule. The Commission also believes that use of an average amount of time is appropriate because some persons may not share eligibility information with affiliates for the purpose of making solicitations or may choose to rely on the exceptions to the notice and opt-out requirement. In either of these cases, the notice would not be required, and the resulting burden would be zero.

The Commission also believes that the availability of model disclosures and opt-out notices may significantly reduce the cost of compliance. In addition, as stated earlier the final rule gives persons considerable flexibility to provide a joint opt-out notice on behalf of multiple affiliates and to define the scope and the duration of the opt-out. This flexibility may reduce the cost of compliance by allowing covered persons to make choices that are most appropriate for their business. Moreover, because the notice is only required to be given once for a minimum period of at least five years, the Commission's estimates assume a higher burden will be incurred during the first year of the OMB clearance period with a lesser burden incurred during the subsequent two years.

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small business entities. *See* 5 U.S.C. 603-605. For the majority of entities subject to the final rule, a small business entity is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or that has fewer than 500 employees. *See http://www.sba.gov/size/indextableofsize.html.*

1. Statement of the need for, and objectives of, the final rule.

The FACT Act amends the FCRA and was enacted, in part, for the purpose of allowing consumers to limit the use of eligibility information received from an affiliate to make solicitations to the consumer. Section 214 of the FACT Act generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer,

[27] The MBA's comment is available at *http://www.ftc.gov/os/comments/affiliate_marketing/04-13481-0033.pdf.* No other comments relating to paperwork burden were received.

unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. Section 214 requires the Commission, together with the other agencies, to issue regulations implementing the section in consultation and coordination with each other. The Commission received no comments on the reasons for the proposed rule. The Commission is adopting the final rule to implement § 214 of the FACT Act. The **SUPPLEMENTARY INFORMATION** above contains information on the objectives of the final rule.

2. Summary of issues raised by comments in response to the initial regulatory flexibility analysis.

In accordance with Section 3(a) of the RFA, the Commission conducted an initial regulatory flexibility analysis in connection with the proposed rule. One commenter, the Mortgage Bankers Association (MBA), believed that the Commission and the other agencies had underestimated the costs of compliance. The issues raised by the MBA are described in the **Paperwork Reduction Act** section above. The MBA's concerns applied equally to small entities and larger entities. The MBA did not raise any issues unique to small entities.

3. Description and estimate of small entities affected by the final rule.

The affiliate marketing rule, which closely tracks the language of section 214 of the FACT ACT, would apply to ''[a]ny person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A).'' In short, section 214 applies to any entity that (1) is under the Commission's jurisdiction pursuant to the FCRA and (2) receives consumer report information from an affiliate and uses that information to make a marketing solicitation to the consumer. The entities covered by the Commission's rule would include non-bank lenders, insurers, retailers, landlords, mortgage brokers, automobile dealers, telecommunication firms, and any other business that shares eligibility information with its affiliates. It is not readily feasible to determine a precise number of small entities that will be subject to the rule, but it is not likely that many of the entities covered by this new rule are small as defined by the Small Business Administration since most of the entities with affiliates are likely to be above the $6 million level. *See http://www.sba.gov/size/indextableofsize.html.*

Although all small entities covered by the Commission's rule potentially could be subject to the final rule, small entities that do not have affiliates would not be subject to the final rule. In addition, small entities that have affiliates may choose not to engage in activities that would require compliance with the final rule. For example, small entities may choose not to share eligibility information with their affiliates for the purpose of making solicitations. Alternatively, small entities and their affiliates may structure their marketing activities in a way that does not trigger the requirement to comply with the final rule, such as by relying upon the exceptions to the notice requirement contained in the final rule.

4. Recordkeeping, reporting, and other compliance requirements.

The final rule requires small entities to provide opt-out notices and renewal notices to consumers in certain circumstances, as discussed in the **SUPPLEMENTARY INFORMATION** above. The final rule also requires small entities to implement consumers' opt-out elections. The final rule contains no requirement to report information to the Commission.

Small entities that have affiliates and that share eligibility information with those affiliates for purposes of making solicitations may be subject to the rule. Small entities that do not have affiliates, do not share eligibility information with their affiliates for marketing purposes, use shared eligibility information for purposes of making solicitations only in accordance with one of the exceptions set forth in the final rule, or structure their marketing activities to eliminate the need to provide an opt-out notice would not be subject to the final rule. The professional skills necessary for preparation of the opt-out notice include compliance and/or privacy specialists and computer programmers.

5. Steps taken to minimize the economic impact on small entities.

The Commission has attempted to minimize the economic impact on small entities by adopting a rule that is consistent with the other federal agencies and choosing alternatives that provide for joint notices and model forms small institutions may, but are not required to, use to minimize the cost of compliance.

Some commenters suggested an alternative that would allow any affiliate to provide the opt-out notice to consumers instead of requiring the affiliate the consumer has a relationship with to provide the notice. The Commission chose the alternative that requires the affiliate with the relationship with the consumer to provide the notice. *See* section IV, *supra.* This alternative is not expected to have a significant impact on small businesses since, as stated earlier, many small businesses are not likely to be subject to the rule or they may opt not to engage in practices that would subject them to the rule's requirements.

List of Subjects

16 CFR Part 680

Consumer reports, Consumer reporting agencies, Credit, Fair Credit Reporting Act, Trade practices.

16 CFR Part 698

Consumer reports, Consumer reporting agencies, Credit, Fair Credit Reporting Act, Trade practices.

■ The Federal Trade Commission amends chapter I, title 16, Code of Federal Regulations, as follows:

■ 1. Add new part 680 as follows:

PART 680—AFFILIATE MARKETING

Sec.
680.1 Purpose and scope.
680.2 Examples.
680.3 Definitions.
680.4–680.20 [Reserved]
680.21 Affiliate marketing opt-out and exceptions.
680.22 Scope and duration of opt-out.
680.23 Contents of opt-out notice; consolidated and equivalent notices.
680.24 Reasonable opportunity to opt out.
680.25 Reasonable and simple methods of opting out.
680.26 Delivery of opt-out notices
680.27 Renewal of opt-out.
680.28 Effective date, compliance date, and prospective application.

Authority: Sec. 214(b), Pub. L. 108-159; 15 U.S.C. 1681s-3

§ 680.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement section 214 of the Fair and Accu-rate Credit Transactions Act of 2003, which (by adding section 624 to Fair Credit Reporting Act) regulates the use, for marketing solicitation purposes, of consumer information provided by persons affiliated with the person making the solicitation.

(b) *Scope.* This part applies to any person over which the Federal Trade Commission has jurisdiction that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose.

§ 680.2 Examples.

The examples in this part are not exclusive. Compliance with an example,

to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 680.3 Definitions.

As used in this part:

(a) *Act.* The term ''Act'' means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate.* The term ''affiliate'' means any company that is related by common ownership or common corporate control with another company.

(c) *Clear and conspicuous.* The term ''clear and conspicuous'' means reasonably under-standable and designed to call attention to the nature and significance of the information presented.

(d) *Common ownership or common corporate control.* The term ''common ownership or common corporate control'' means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or the power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the Commission determines; or

(2) Any person has, with respect to both companies, a relationship described in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(e) *Company.* The term ''company'' means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Concise*—(1) *In general.* The term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(g) *Consumer.* The term ''consumer'' means an individual.

(h) *Eligibility information.* The term ''eligibility information'' means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(i) *Person.* The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(j) *Pre-existing business relationship*—(1) *In general.* The term ''pre-existing business relationship'' means a relationship between a person, or a person's licensed agent, and a consumer based on—

(i) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this part;

(ii) The purchase, rental, or lease by the consumer of the persons' goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part; or

(iii) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part.

(2) *Examples of pre-existing business relationships.* (i) If a consumer has an existing loan account with a creditor, the creditor has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(ii) If a consumer obtained a mortgage from a mortgage lender, but refinanced the mortgage loan with a different lender when the mortgage loan came due, the first mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date the outstanding balance of the loan is paid and the loan is closed.

(iii) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer's entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer's loan to an investor but also retains an ownership interest in the loan, the mortgage lender continues to have a pre-existing business relationship with the consumer, but the investor does not have a pre-existing business relationship with the consumer. If the mortgage lender retains ownership of the loan, but sells ownership of the servicing rights to the consumer's loan, the mortgage lender continues to have a pre-existing business relationship with the consumer. The purchaser of the servicing rights also has a pre-existing business relationship with the consumer as of the date it purchases ownership of the servicing rights, but only if it collects payments from or otherwise deals directly with the consumer on a continuing basis.

(iv) If a consumer applies to a creditor for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the application.

(v) If a consumer makes a telephone inquiry to a creditor about its products or services and provides contact information to the creditor, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(vi) If a consumer makes an inquiry to a creditor by e-mail about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services

for three months after the date of the inquiry.

(vii) If a consumer has an existing relationship with a creditor that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated creditor to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(3) *Examples where no pre-existing business relationship is created.* (i) If a consumer makes a telephone call to a centralized call center for a group of affiliated companies to inquire about the consumer's existing account with a creditor, the call does not constitute an inquiry to any affiliate other than the creditor that holds the consumer's account and does not establish a pre-existing business relationship between the consumer and any affiliate of the account-holding creditor.

(ii) If a consumer who has a loan account with a creditor makes a telephone call to an af-filiate of the creditor to ask about the affiliate's retail locations and hours, but does not make an inquiry about the affiliate's products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the affiliate's capture of the consumer's telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(iii) If a consumer makes a telephone call to a creditor in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that creditor's products or services will be marketed to consumers who call in response, the call does not create a pre-existing business relationship between the consumer and the creditor because the consumer has not made an inquiry about a product or service offered by the creditor, but has merely responded to an offer for a free promotional item.

(k) *Solicitation*—(1) *In general.* The term ''solicitation'' means the marketing of a product or service initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(l) *You* means a person described in § 680.1(b).

§§ 680.4–680.20 [Reserved]

§ 680.21 Affiliate marketing opt-out and exceptions.

(a) *Initial notice and opt-out requirement*—(1) *In general.* You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless—

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to ''opt out,'' or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2) *Example.* A consumer has a homeowner's insurance policy with an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its home equity loan products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The creditor is prohibited from using eligibility information received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the consumer is given a notice and opportunity to opt out and the consumer does not opt out.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph (a) must be provided:

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b) *Making solicitations*—(1) *In general.* For purposes of this part, you make a solicitation for marketing purposes if—

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2) *Receiving eligibility information from an affiliate, including through a common database.* You may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that you may access.

(3) *Receipt or use of eligibility information by your service provider.* Except as provided in paragraph (b)(5) of this section, you receive or use an affiliate's eligibility information if a service provider acting on your behalf (whether an affiliate or a nonaffiliated third party) receives or uses that information in the manner described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section. All relevant facts and circumstances will determine whether a person is acting as your service provider when it receives or uses an affiliate's eligibility information in connection with marketing your products and services.

(4) *Use by an affiliate of its own eligibility information.* Unless you have used eligibility information that you receive from an affiliate in the manner described in paragraph (b)(1)(ii) of this

section, you do not make a solicitation subject to this part if your affiliate:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or

(ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.

(5) *Use of eligibility information by a service provider.* (i) *In general.* You do not make a solicitation subject to this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that you may access) receives eligibility information from your affiliate that your affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market your products or services to the consumer, so long as—

(A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);

(B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market your products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;

(C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;

(D) Your affiliate is identified on or with the marketing materials provided to the consumer; and

(E) You do not directly use your affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) *Writing requirements.* (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between your affiliate and the service provider; and

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(6) *Examples of making solicitations.* (i) A consumer has a loan account with a creditor, which is affiliated with an insurance company. The insurance company receives eligibility information about the consumer from the creditor. The insurance company uses that eligibility information to identify the consumer to receive a solicitation about insurance products, and, as a result, the insurance company provides a solicitation to the consumer about its insurance products. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that after using the eligibility information to identify the consumer to receive a solicitation about insurance products, the insurance company asks the creditor to send the solicitation to the consumer and the creditor does so. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company's products.

(iii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have loan accounts with the creditor is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the creditor's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the creditor. The creditor reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company's marketing materials and sends marketing materials about the insurance company's products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the creditor used its own eligibility information. Therefore, pursuant to paragraph (b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the creditor provides the insurance company's criteria to the creditor's service provider and directs the service provider to use the creditor's eligibility information to identify creditor consumers who meet the criteria and to send the insurance company's marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use of the creditor's information to market its products to the creditor's consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a creditor, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The creditor controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the creditor and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the creditor's eligibility information in accordance with specific terms and conditions established by the creditor relating to the marketing of the products and services of all affiliates, including the insurance company. In a separate written communication, the creditor specifies the terms and conditions under which the service provider may use the creditor's eligibility information to market the insurance company's products and services to the creditor's consumers. The specific terms and conditions are: a list of affiliated companies (including the insurance company) whose products or services may be marketed to the creditor's consumers by the service provider; the specific products or types of products that may be marketed to the creditor's consumers by the service provider; the categories of eligibility information that may be used by the service provider in marketing products or services to the creditor's consumers; the types or

categories of the creditor's consumers to whom the service provider may market products or services of creditor affiliates; the number and/or types of marketing communications that the service provider may send to the creditor's consumers; and the length of time during which the service provider may market the prod-ucts or services of the creditor's affiliates to its consumers. The creditor periodically evaluates the service provider's compliance with these terms and conditions. The insurance company asks the service provider to market insurance products to certain consumers who have loan accounts with the creditor. Without using the creditor's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the service provider. The service provider uses the creditor's eligibility information from the common database to identify the creditor's consumers to whom insurance products will be marketed. When the insurance company's marketing materials are provided to the identified consumers, the name of the creditor is displayed on the insurance marketing materials, an introductory letter that accompanies the marketing materials, an account statement that accompanies the marketing materials, or the envelope containing the marketing materials. The re-quirements of paragraph (b)(5) of this section have been satisfied, and the insurance company has not made a solicitation to the consumer.

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the creditor's eligibility information to market the products and services of other affiliates to the creditor's consumers whenever the service provider deems it appropriate to do so. The service provider uses the creditor's eligibility information in accordance with the discretion af-forded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c) *Exceptions.* The provisions of this part do not apply to you if you use eligibility information that you receive from an affiliate:

(1) To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this paragraph shall not be construed as permitting you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this part;

(4) In response to a communication about your products or services initiated by the consumer;

(5) In response to an authorization or request by the consumer to receive solicitations; or

(6) If your compliance with this part would prevent you from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Example of the pre-existing business relationship exception.* A consumer has a loan account with a creditor. The consumer also has a relationship with the creditor's securities affiliate for management of the consumer's securities portfolio. The creditor receives eligibility information about the consumer from its securities affiliate and uses that information to make a solicitation to the consumer about the creditor's wealth management services. The creditor may make this solicitation even if the consumer has not been given a notice and opportunity to opt out because the creditor has a pre-existing business relationship with the consumer.

(2) *Examples of service provider exception.* (i) A consumer has an insurance policy issued by an insurance company. The insurance company furnishes eligibility information about the consumer to an affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its credit products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions in para-graph (c) of this section apply. The consumer has been given an opt-out notice and has elected to opt out of receiving such solicitations. The creditor asks a service provider to send the solicitation to the consumer on its behalf. The service provider may not send the solicitation on behalf of the creditor because, as a result of the consumer's opt-out election, the creditor is not permitted to make the solicitation.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The creditor asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the creditor because, as a result of the consumer's not opting out, the creditor is permitted to make the solicitation.

(3) *Examples of consumer-initiated communications.* (i) A consumer who has a consumer loan account with a finance company initiates a communication with the creditor's mortgage lending affiliate to request information about a mortgage. The mortgage lender affiliate may use eligibility information about the consumer it obtains from the finance company or any other affiliate to make solicitations regarding mortgage products in response to the consumer-initiated communication.

(ii) A consumer who has a loan account with a creditor contacts the creditor to request information about how to save and invest for a child's college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the creditor and one or more affiliates of the creditor may be responsive to that communication. Such products or services may include the following: mutual funds offered by the creditor's mutual fund affil-iate; section 529 plans offered by the creditor, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different creditor in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer's request for information about saving and investing for a child's college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer's credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a creditor to ask about retail locations and hours, but does not request information about products or services. The creditor may not use eligibility information it receives from an affiliate to make

solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the creditor's products or services. Thus, the use of eligibility information received from an affiliate would not be responsive to the communication and the exception does not apply.

(v) A consumer calls a creditor to ask about office locations and hours. The customer service representative asks the consumer if there is a particular product or service about which the consumer is seeking information. The consumer responds that the consumer wants to stop in and find out about second mortgage loans. The customer service representative offers to provide that information by telephone and mail additional information and application materials to the consumer. The consumer agrees and provides or confirms contact information for receipt of the materials to be mailed. The creditor may use eligibility information it receives from an affiliate to make solicitations to the consumer about mortgage loan products because such solicitations respond to the consumer-initiated communication about products or services.

(4) *Examples of consumer authorization or request for solicitations.* (i) A consumer who obtains a mortgage from a mortgage lender authorizes or requests information about homeowner's insurance offered by the mortgage lender's insurance affiliate. Such authorization or request, whether given to the mortgage lender or to the insurance affiliate, would permit the insurance affiliate to use eligibility information about the consumer it obtains from the mortgage lender or any other affiliate to make solicitations to the consumer about homeowner's insurance.

(ii) A consumer completes an online application to apply for a credit card from a department store. The store's online application contains a blank check box that the consumer may check to authorize or request information from the store's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from store's affiliates.

(iii) A consumer completes an online application to apply for a credit card from a department store. The store's online application contains a pre-selected check box indicating that the consumer authorizes or requests information from the store's affiliates. The consumer does not deselect the check box. The consumer has not authorized or requested solicitations from the store's affiliates.

(iv) The terms and conditions of a credit account agreement contain preprinted boilerplate language stating that by applying to open an account the consumer authorizes or requests to receive solicitations from the creditor's affiliates. The consumer has not authorized or requested solicitations from the creditor's affiliates.

(e) *Relation to affiliate-sharing notice and opt-out.* Nothing in this part limits the responsibility of a person to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act where applicable.

§ 680.22 Scope and duration of opt-out.

(a) *Scope of opt-out*—(1) *In general.* Except as otherwise provided in this section, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate as described in the notice to make solicitations to the consumer.

(2) *Continuing relationship*—(i) *In general.* If the consumer establishes a continuing relationship with you or your affiliate, an opt-out notice may apply to eligibility information obtained in connection with—

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with you or your affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and you or your affiliates as described in the notice.

(ii) *Examples of continuing relationships.* A consumer has a continuing relationship with you or your affiliate if the consumer—

(A) Opens a credit account with you or your affiliate;

(B) Obtains a loan for which you or your affiliate owns the servicing rights;

(C) Purchases an insurance product from you or your affiliate;

(D) Holds an investment product through you or your affiliate, such as when you act or your affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;

(E) Enters into an agreement or understanding with you or your affiliate whereby you or your affiliate undertakes to arrange or broker a home mortgage loan for the consumer;

(F) Enters into a lease of personal property with you or your affiliate; or

(G) Obtains financial, investment, or economic advisory services from you or your affiliate for a fee.

(3) *No continuing relationship*—(i) *In general.* If there is no continuing relationship between a consumer and you or your affiliate, and you or your affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of isolated transactions.* An isolated transaction occurs if—

(A) The consumer uses your or your affiliate's ATM to withdraw cash from an account at a financial institution; or

(B) You or your affiliate sells the consumer a money order, airline tickets, travel insurance, or traveler's checks in isolated transactions.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships*—(i) *In general.* A consumer must be given a new opt-out notice if, after all continuing relationships with you or your affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with you or your affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph (b) of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.

(ii) *Example.* A consumer has an automobile loan account with a creditor

that is part of an affiliated group. The consumer pays off the loan. After paying off the loan, the consumer subsequently obtains a second mortgage loan from the creditor. The consumer must be given a new notice and opportunity to opt out before the creditor's affiliates may make solicitations to the consumer using eligibility information obtained by the creditor in connection with the new mortgage relationship, regardless of whether the consumer opted out in connection with the automobile loan account.

(b) *Duration of opt-out.* The election of a consumer to opt out must be effective for a period of at least five years (the ''opt-out period'') beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

§ 680.23 Contents of opt-out notice; consolidated and equivalent notices.

(a) *Contents of opt-out notice*—(1) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies;''

(ii) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Joint relationships.* (i) If two or more consumers jointly obtain a product or service, a single opt-out notice may be provided to the joint consumers. Any of the joint consumers may exercise the right to opt out.

(ii) The opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require all joint consumers to opt out before implementing any opt-out direction.

(3) *Alternative contents.* If the consumer is afforded a broader right to opt out of receiving marketing than is required by this part, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

(4) *Model notices.* Model notices are provided in Appendix C of Part 698 of this chapter.

(b) *Coordinated and consolidated notices.* A notice required by this part may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the entity providing the notice, including but not limited to the notice de-scribed in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(c) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this part, and that is provided to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this section.

§ 680.24 Reasonable opportunity to opt out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by § 680.21(a)(1)(ii) of this part.

(b) *Examples of a reasonable opportunity to opt out.* The consumer is given a reasonable opportunity to opt out if:

(1) *By mail.* The opt-out notice is mailed to the consumer. The consumer is given 30 days from the date the notice is mailed to elect to opt out by any reasonable means.

(2) *By electronic means.* (i) The opt-out notice is provided electronically to the consumer, such as by posting the notice at an Internet Web site at which the consumer has obtained a product or service. The consumer acknowledges receipt of the electronic notice. The consumer is given 30 days after the date the consumer acknowledges receipt to elect to opt out by any reasonable means.

(ii) The opt-out notice is provided to the consumer by e-mail where the consumer has agreed to receive disclosures by e-mail from the person sending the notice. The consumer is given 30 days after the e-mail is sent to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* The opt-out notice is provided to the consumer at the time of

an electronic transaction, such as a transaction conducted on an Internet Web site. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction. There is a simple process that the consumer may use to opt out at that time using the same mechanism through which the transaction is conducted.

(4) *At the time of an in-person transaction.* The opt-out notice is provided to the consumer in writing at the time of an in-person transaction. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, and is not permitted to complete the transaction without making a choice. There is a simple process that the consumer may use during the course of the in-person transaction to opt out, such as completing a form that requires consumers to write a ''yes'' or ''no'' to indicate their opt-out preference or that requires the consumer to check one of two blank check boxes—one that allows consumers to indicate that they want to opt out and one that allows consumers to indicate that they do not want to opt out.

(5) *By including in a privacy notice.* The opt-out notice is included in a Gramm-Leach-Bliley Act privacy notice. The consumer is allowed to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under that privacy notice.

§ 680.25 Reasonable and simple methods of opting out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable and simple method to opt out, as required by § 680.21(a)(1)(ii) of this part.

(b) *Examples*—(1) *Reasonable and simple opt-out methods.* Reasonable and simple methods for exercising the opt-out right include—

(i) Designating a check-off box in a prominent position on the opt-out form;

(ii) Including a reply form and a self-addressed envelope together with the opt-out notice;

(iii) Providing an electronic means to opt out, such as a form that can be electronically mailed or processed at an Internet Web site, if the consumer agrees to the electronic delivery of information;

(iv) Providing a toll-free telephone number that consumers may call to opt out; or

(v) Allowing consumers to exercise all of their opt-out rights described in a consolidated opt-out notice that includes the privacy opt-out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, the affiliate sharing opt-out under the Act, and the affiliate marketing opt-out under the Act, by a single method, such as by calling a single toll-free telephone number.

(2) *Opt-out methods that are not reasonable and simple.* Reasonable and simple methods for exercising an opt-out right *do not* include—

(i) Requiring the consumer to write his or her own letter;

(ii) Requiring the consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice;

(iii) Requiring the consumer who receives the opt-out notice in electronic form only, such as through posting at an Internet Web site, to opt out solely by paper mail or by visiting a different Web site without providing a link to that site.

(c) *Specific opt-out means.* Each consumer may be required to opt out through a specific means, as long as that means is reasonable and simple for that consumer.

§ 680.26 Delivery of opt-out notices.

(a) *In general.* The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in this part or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of reasonable expectation of actual notice.* A consumer may reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Hand-delivers a printed copy of the notice to the consumer;

(2) Mails a printed copy of the notice to the last known mailing address of the consumer;

(3) Provides a notice by e-mail to a consumer who has agreed to receive electronic disclosures by e-mail from the affiliate providing the notice; or

(4) Posts the notice on the Internet Web site at which the consumer obtained a product or service electronically and requires the consumer to acknowledge receipt of the notice.

(c) *Examples of no reasonable expectation of actual notice.* A consumer may *not* reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Only posts the notice on a sign in a branch or office or generally publishes the notice in a newspaper;

(2) Sends the notice via e-mail to a consumer who has not agreed to receive electronic disclosures by e-mail from the affiliate providing the notice; or

(3) Posts the notice on an Internet Web site without requiring the consumer to acknowledge receipt of the notice.

§ 680.27 Renewal of opt-out.

(a) *Renewal notice and opt-out requirement*—(1) *In general.* After the opt-out period expires, you may not make solicitations based on eligibility information you receive from an affiliate to a consumer who previously opted out, unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§ 680.24 through 680.26 of this part, and a reasonable opportunity and a reasonable and simple method to renew the opt-out, and the consumer does not renew the opt-out; or

(ii) An exception in § 680.21(c) of this part applies.

(2) *Renewal period.* Each opt-out renewal must be effective for a period of at least five years as provided in § 680.22(b) of this part.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph must be provided:

(i) By the affiliate that provided the previous opt-out notice, or its successor; or

(ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) *Contents of renewal notice.* The renewal notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for

example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies;''

(2) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(3) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(4) That the consumer previously elected to limit the use of certain information to make solicitations to the consumer;

(5) That the consumer's election has expired or is about to expire;

(6) That the consumer may elect to renew the consumer's previous election;

(7) If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and

(8) A reasonable and simple method for the consumer to opt out.

(c) *Timing of the renewal notice*—(1) *In general.* A renewal notice may be provided to the consumer either—

(i) A reasonable period of time before the expiration of the opt-out period; or

(ii) Any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

(2) *Combination with annual privacy notice.* If you provide an annual privacy notice under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt out.

§ 680.28 Effective date, compliance date, and prospective application.

(a) *Effective date.* This part is effective January 1, 2008.

(b) *Mandatory compliance date.* Compliance with this part is required not later than October 1, 2008.

(c) *Prospective application.* The provisions of this part shall not prohibit you from using eligibility information that you receive from an affiliate to make solicitations to a consumer if you receive such information prior to October 1, 2008. For purposes of this section, you are deemed to receive eligibility information when such information is placed into a common database and is accessible by you.

PART 698—AMENDED

■ 2. Revise the authority citation for Part 698 to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, 1681s, and 1681s-3; sections 211(d) and 214(b), Pub. L. 108-159, 117 Stat.1952.

■ 3. Amend § 698.1 by revising paragraph (b) to read as follows:

§ 698.1 Authority and purpose.

* * * * *

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), 615(d), and 624 of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and sections 211(d) and 214(b) of the Fair and Accurate Credit Transactions Act of 2003.

■ 4. Add Appendix C to Part 698 as follows:

APPENDIX C TO PART 698—MODEL FORMS FOR AFFILIATE MARKETING OPT-OUT NOTICES

A. Although use of the model forms is not required, use of the model forms in this Appendix (as applicable) complies with the requirement in section 624 of the Act for clear, conspicuous, and concise notices.

B. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this Appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to ''your income,'' ''your account history,'' and ''your credit score.''

2. Substituting other types of information for ''income,'' ''account history,'' or ''credit score'' for accuracy, such as ''payment history,'' ''credit history,'' ''payoff status,'' or ''claims history.''

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as ''the [ABC] group of companies,'' including without limitation a statement that the entity providing the notice recently purchased the consumer's account.

4. Substituting other types of affiliates covered by the notice for ''credit card,'' ''insurance,'' or ''securities'' affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: ''If you previously opted out, you do not need to do so again.''

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

C-1 Model Form for Initial Opt-out notice (Single-Affiliate Notice)
C-2 Model Form for Initial Opt-out notice (Joint Notice)
C-3 Model Form for Renewal Notice (Single-Affiliate Notice)
C-4 Model Form for Renewal Notice (Joint Notice)
C-5 Model Form for Voluntary ''No Marketing'' Notice

C-1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)

[Your Choice to Limit Marketing]/[Marketing Opt-out]

— [Name of Affiliate] is providing this notice.
— [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
— You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].
— Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period

expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

— [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

— **By telephone:** 1-877-###–####
— **On the Web:** *www.—.com*
— **By mail:** check the box and complete the form below, and send the form to:

[Company name]
[Company address]

__ Do not allow your affiliates to use my personal information to market to me.

C-2 Model Form for Initial Opt-out Notice (Joint Notice)

[Your Choice to Limit Marketing]/[Marketing Opt-out]

— The [ABC group of companies] is providing this notice.

— [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

— You may limit the [ABC companies], such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

— Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].

— [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

— **By telephone:** 1-877-###–####
— **On the Web:** *www.—.com*
— **By mail:** check the box and complete the form below, and send the form to:

[Company name]
[Company address]

__ Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C-3 Model Form for Renewal Notice (Single-Affiliate Notice)

[Renewing Your Choice to Limit Marketing]/[Renewing Your Marketing Opt-out]

— [Name of Affiliate] is providing this notice.

— [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

— You previously chose to limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].

— Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

— **By telephone:** 1-877-###–####
— **On the Web:** *www.—.com*
— **By mail:** check the box and complete the form below, and send the form to:

[Company name]
[Company address]

__ Renew my choice to limit marketing for [x] more years.

C-4 Model Form for Renewal Notice (Joint Notice)

[Renewing Your Choice to Limit Marketing]/[Renewing Your Marketing Opt-out]

— The [ABC group of companies] is providing this notice.

— [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

— You previously chose to limit the [ABC companies], such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

— Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

— **By telephone:** 1-877-###–####
— **On the Web:** *www.—.com*
— **By mail:** check the box and complete the form below, and send the form to:

[Company name]
[Company address]

__ Renew my choice to limit marketing for [x] more years.

C-5 Model Form for Voluntary "No Marketing" Notice

Your Choice to Stop Marketing

— [Name of Affiliate] is providing this notice.

— You may choose to stop all marketing from us and our affiliates.

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The Federal Trade Commission.
Dated: October 22, 2007.
By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–21348 Filed 10–29–07: 8:45 am]

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Federal Register

Tuesday,
October 30, 2007

Part III

Environmental Protection Agency

Pesticides; Revised Fee Schedule for Registration Applications; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1066; FRL–8155–6]

Pesticides; Revised Fee Schedule for Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a revised list of pesticide registration service fees applicable to specified pesticide applications and tolerance actions. Under the Pesticide Registration Improvement Renewal Act, the number of fee categories has been increased, the registration service fees for some covered pesticide registration applications received on or after October 1, 2007, have been increased, and certain new procedures have been established. The new fees became effective on October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey (7501P), Immediate Office, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776;e-mail address: *leovey.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you register pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Agricultural pesticide manufacturers (NAICS code 32532).
- Antimicrobial pesticide manufacturers (NAICS code 32561).
- Antifoulant pesticide manufacturers (NAICS code 32551).
- Wood preservative manufacturers (NAICS code 32519).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the notice and in FIFRA section 33. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1066. Publicly available docket materials are available either in the electronic docket at*http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

In accordance with FIFRA section 33(b)(3), EPA published in the **Federal Register** of March 17, 2004 (69 FR 12772) (FRL–7348–2), a schedule of the fees and decision times for review of a covered application. Section 33 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), establishes a registration service fee system for certain types of pesticide applications, establishment of tolerances and certain other regulatory decisions under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 33 also established a schedule of decision review times for applications covered by the service fee system. Since March 23, 2004, the Agency has been administering the registration service fee system. The schedule of fees and decision review times was published in the **Federal Register** of March 17, 2004 (69 FR 12772). Subsequently, as authorized by FIFRA section 33, fees were increased by 5% in a notice issued in the **Federal Register** of June 2, 2005 (70 FR 32327) (FRL–7706–1).

III. The Pesticide Registration Improvement Renewal Act (PRIRA)

On October 9, 2007, the Pesticide Registration Improvement Renewal Act was signed by the President, revising, among other things, FIFRA section 33. The new law reauthorized the service fee system through 2012 and established fees and review times for applications received during fiscal years 2008 through 2012. The publication of this fee schedule is required by section 33(f)(1) of FIFRA as amended.

Key changes in the new law include the following:

1. The number of fee categories has been increased from 90 to 140. In so doing, new categories were added, particularly in the area of tolerances, review of study protocols, risk assessments not associated with an application, and plant-incorporated protectants (PIPs). In addition, some current categories were split into several new categories to provide more specific listings.

2. The EPA identification system for fee categories has been revised to a 3-digit system to accommodate the increased number of categories. The new fee schedule continues to preface fee categories according to the Divisional responsibilities within OPP (e.g., R for Registration Division). As an example, the fee category for the new category ''Enriched isomer(s) of registered mixed-isomer active ingredient'' is R122.

3. Fees are due at application. Previously, the application could be submitted to the Agency in advance of fee submittal and EPA would ''invoice'' or ''bill'' the applicant for the fee. Units VI. and VII. discuss how the Agency intends to implement this new provision.

4. EPA must within 21 days after receipt of the application and payment reject any application that does not pass the initial content screen and that cannot be corrected. EPA must screen the application within 21 days and make a determination, and verify appropriate fee submission (or a waiver request with at least 25% of the applicable fee accompanying the waiver request).

5. A portion of the fee, 25%, is non-refundable. The amount of a refund for an early withdrawal during the first 60 days of the decision time review period is now 75% of the fee. Previously, the Agency was required to refund 90% for an early withdrawal.

6. A small business fee waiver cannot reduce the fee more than 75% of the appropriate registration service fee instead of 100%, previously.

7. Fees will be increased by 5% for applications received during the period October 1, 2008 through September 30, 2010, and thereafter increased by an additional 5% for applications received as of October 1, 2010. EPA will issue notice in the **Federal Register** of the new fee schedules as appropriate.

IV. Elements of the Fee Schedule

This unit explains how EPA has organized the fee schedule identified in the statute and how to read the fee schedule tables, and includes a key to terminology published with the table in the Congressional Review. EPA's organization and presentation of the fee schedule information does not affect the categories of registration service fees, or the structure or procedures for submitting applications or petitions for tolerance.

A. The Congressional Record Fee Schedule

The fee schedule published in the Congressional Record of July 21, 2007 identifies the registration service fees and decision times and is organized according to the organizational units of the Office of Pesticide Programs (OPP) within EPA. Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The fee categories differ by Division.

Not all application types are covered by, or subject to, the fee system and examples include:

1. The re-establishment of a time-limited tolerance.
2. Review of confirmatory data submitted in support of an already-issued registration.
3. Submission of a sub-registrant/supplemental distributor label.
4. Special Local Needs Registrations submitted under FIFRA section 24(c).
5. Emergency Exemption Requests submitted under FIFRA section 18.
6. Notifications as described in Pesticide Registration Notice 98–10.
7. Fast track amendments or label amendments that require no data review.
8. Minor formulation amendments as described in Pesticide Registration Notice 98–10.
9. 6(a)2 evaluations.

B. Fee Schedule and Decision Review Times

In today's notice, EPA has retained the format of previous schedule notices and included the corrections to the schedule published in the September 24, 2007 issue of the Congressional Record. These corrections included: The registration service fee for new category No. 133 should be $78,750, rather than $278,250; the decision time for new category No. 47 in fiscal year 3 should be 12 months; and the action description for the new category No. 61 should read: ''Non-food use; outdoor; FIFRA, subsection 2(mm) uses (1).'' The schedules are presented as 11 tables, organized by OPP Division and by type of application or pesticide subject to the fee. These tables only list the decision time review periods for fiscal years 2008, 2009, and 2010 as these are the only applicable review periods for applications received on or after October 1, 2008. Unit V. presents fee tables for the Registration Division (RD) (5 tables), the Antimicrobials Division (AD) (3 tables), and the Biopesticides and Pollution Prevention Division (BPPD) (3 tables).

C. How to Read the Tables

1. Each table consists of the following columns:

- The column entitled ''EPA No.'' assigns an EPA identifier to each fee category. There are 140 categories spread across the 3 Divisions. There are 58 RD categories, 27 AD categories, and 55 BPPD categories. For tracking purposes, OPP has assigned a 3-digit identifier to each category, beginning with RD categories, followed by AD and BPPD categories. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R= Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division).
- The column entitled ''CR No.'' cross-references the current Congressional Record category number for convenience. However, EPA will be using the categories as numbered in the ''EPA No.'' column in its tracking systems.
- The column entitled ''Action'' describes the categories of action. In establishing the expanded fee schedule categories, Congress eliminated some of the more confusing terminology of the original categories. For example, instead of the term ''fast-track,'' the schedule in the Congressional Record uses the regulatory phrase ''identical or substantially similar in composition and use to a registered product.''
- The column entitled ''Decision Time'' list the decision times in months for each type of action for Fiscal Years 2008, 2009, and 2010. The 2010 decision times apply to 2011 and 2012. The decision review periods in the tables are based upon EPA fiscal years (FY), which run from October 1 through September 30.
- The column entitled ''FY 08 Registration Service Fee ($)'' lists the registration service fee for the action for fiscal year 2008 (October 1, 2007 through September 30, 2008).

2. The following acronyms are used in some of the tables:

- DART–Dose Adequacy Response Team
- DNT–Developmental Neurotoxicity
- HSRB–Human Studies Review Board
- GW/SW–Ground Water/Surface Water
- PHI–Pre-Harvest Interval
- PPE–Personal Protective Equipment
- REI–Restricted Entry Interval
- SAP–FIFRA Scientific Advisory Panel

V. PRIRA Fee Schedule Tables—Effective October 1, 2007

A. Registration Division (RD)

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that are termed ''conventional chemicals,'' excluding pesticides intended for antimicrobial uses. The term ''conventional chemical'' is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic origin, synthetic chemicals that are identical to naturally-occurring chemicals and microbial pesticides. Tables 1 through 5 of Unit V.A. cover RD actions.

TABLE 1.–REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision time (in months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R010	1	Food use[1]	24	24	24	516,300

TABLE 1.–REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS—Continued

EPA No.	CR No.	Action	Decision time (in months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R020	2	Food use; reduced risk[1]	18	18	18	516,300
R030	3	Food use; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit and temporary tolerance same as #R040[1]	24	24	24	570,700
R040	4	Food use; Experimental Use Permit application; establish temporary tolerance; submitted before application for registration; credit $326,025 toward new active ingredient application that follows	18	18	18	380,500
R050	5	Food use; application submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit and temporary tolerance are granted[1]	14	14	14	190,300
R060	6	Non-food use; outdoor[1]	21	21	21	358,700
R070	7	Non-food use; outdoor; reduced risk[1]	16	16	16	358,700
R080	8	Non-food use; outdoor; Experimental Use Permit application submitted simultaneously with application for registration; decision time for Experimental Use Permit same as #R090[1]	21	21	21	396,800
R090	9	Non-food use; outdoor; Experimental Use Permit application submitted before application for registration; credit $228,225 toward new active ingredient application that follows	16	16	16	266,300
R100	10	Non-food use; outdoor; submitted after Experimental Use Permit application; decision time begins after Experimental Use Permit isgranted[1]	12	12	12	130,500
R110	11	Non-food use; indoor[1]	20	20	20	199,500
R120	12	Non-food use; indoor; reduced risk[1]	14	14	14	199,500
R121	13	Non-food use; indoor; Experimental Use Permit application submitted before application for registration; credit $100,000 toward new active ingredient application that follows	18	18	18	150,000
R122	14	Enriched isomer(s) of registered mixed-isomer activeingredient[1]	18	18	18	260,900
R123	15	Seed treatment only; includes non-food and food uses; limited uptake into Raw Agricultural Commodities[1]	18	18	18	388,200
R124	16	Conditional Ruling on Preapplication Study Waivers; applicant-initiated	6	6	6	2,080

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 2.—REGISTRATION DIVISION—NEW USES

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R130	17	First food use; indoor; food/food handling[1]	21	21	21	157,500
R140	18	Additional food use; Indoor; food/food handling	15	15	15	36,750
R150	19	First food use[1]	21	21	21	217,400
R160	20	First food use; reduced risk[1]	16	16	16	217,400
R170	21	Additional food use	15	15	15	54,400
R180	22	Additional food use; reduced risk	10	10	10	54,400

TABLE 2.—REGISTRATION DIVISION—NEW USES—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R190	23	Additional food uses; six or more submitted in one application	15	15	15	326,400
R200	24	Additional food uses; six or more submitted in one application; reduced risk	10	10	10	326,400
R210	25	Additional food use; Experimental Use Permit application; establish temporary tolerance; no credit toward new use registration	12	12	12	40,300
R220	26	Additional food use; Experimental Use Permit application; crop destruct basis; no credit toward new use registration	6	6	6	16,320
R230	27	Additional use; non-food; outdoor	15	15	15	21,740
R240	28	Additional use; non-food; outdoor; reduced risk	10	10	10	21,740
R250	29	Additional use; non-food; outdoor; Experimental Use Permit application; no credit toward new use registration	6	6	6	16,320
R260	30	New use; non-food; indoor	12	12	12	10,500
R270	31	New use; non-food; indoor; reduced risk	9	9	9	10,500
R271	32	New use; non-food; indoor; Experimental Use Permit application; no credit toward new use registration	6	6	6	8,000
R272	33	Review of Study Protocol; applicant-initiated; excludes DART, pre-registration conferences, Rapid Response review, DNT protocol review, protocols needing HSRB review	3	3	3	2,080
R273	34	Additional use; seed treatment; limited uptake into Raw Agricultural Commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food or non-food uses	12	12	12	41,500
R274	35	Additional uses; seed treatment only; six or more submitted in one application; limited uptake into Raw Agricultural Commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food and/or non-food uses	12	12	12	249,000

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 3.—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R280	36	Establish import tolerance; new active ingredient or first food use[1]	21	21	21	262,500
R290	37	Establish import tolerance; additional food use	15	15	15	52,500
R291	38	Establish import tolerances; additional food uses; six or more crops submitted in one petition	15	15	15	315,000
R292	39	Amend an established tolerance (e.g., decrease or increase); domestic or import; applicant-initiated	10	10	10	37,300
R293	40	Establish tolerance(s) for inadvertent residues in one crop; applicant-initiated	12	12	12	44,000
R294	41	Establish tolerances for inadvertent residues; six or more crops submitted in one application; applicant-initiated	12	12	12	264,000

TABLE 3.—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R295	42	Establish tolerance(s) for residues in one rotational crop in response to a specific rotational crop application; applicant-initiated	15	15	15	54,400
R296	43	Establish tolerances for residues in rotational crops in response to a specific rotational crop petition; six or more crops submitted in one application; applicant-initiated	15	15	15	326,400

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 4.—REGISTRATION DIVISION—NEW PRODUCTS

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R300	44	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	3	1,300
R301	45	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner	4	4	4	1,560
R310	46	New end-use or manufacturing-use product; requires review of data package within RD; includes reviews and/or waivers of data for only: • Product chemistry and/or • Acute toxicity and/or • Public health pest efficacy	6	6	6	4,360
R311	49	New product; requires approval of new food-use inert; applicant-initiated; excludes approval of safeners	12	12	12	15,540
R312	50	New product; requires approval of new non-food-use inert; applicant-initiated	6	6	6	8,300
R313	51	New product; requires amendment to existing inert tolerance exemption (e.g., adding post-harvest use); applicant-initiated	10	10	10	11,420
R320	47	New product; new physical form; requires data review in science divisions	12	12	12	10,880
R330	48	New manufacturing-use product; registered active ingredient; selective data citation	12	12	12	16,320
R331	52	New product; repack of identical registered end-use product as a manufacturing-use product; same registered uses only	3	3	3	2,080
R332	53	New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of completely new generic data package; registered uses only	24	24	24	233,000

TABLE 5.—REGISTRATION DIVISION—AMENDMENTS TO REGISTRATION

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
R340	54	Amendment requiring data review within RD (e.g., changes to precautionary label statements, or source changes to an unregistered source of active ingredient)[1]	4	4	4	3,280
R350	55	Amendment requiring data review in science divisions (e.g., changes to REI, or PPE, or PHI, or use rate, or number of applications; or add aerial application; or modify GW/SW advisory statement)[1]	8	8	8	10,880
R370	56	Cancer reassessment; applicant-initiated	18	18	18	163,100
R371	57	Amendment to Experimental Use Permit; requires data review/risk assessment	6	6	6	8,300
R372	58	Refined ecological and/or endangered species assessment; applicant-initiated	18	18	12	155,300

[1]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

B. Antimicrobials Division (AD)

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under FIFRA section 2(mm)(1)(A), including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. Tables 6 through 8 of Unit V.B. cover AD actions.

TABLE 6.—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
A380	59	Food use; establish tolerance exemption[1]	24	24	24	94,500
A390	60	Food use; establish tolerance[1]	24	24	24	157,500
A400	61	Non-food use; outdoor; FIFRA section 2(mm) uses[1]	18	18	18	78,750
A410	62	Non-food use; outdoor; uses other than FIFRAsection 2(mm)[1]	21	21	21	157,500
A420	63	Non-food use; indoor; FIFRA section 2(mm) uses[1]	18	18	18	52,500
A430	64	Non-food use; indoor; uses other than FIFRAsection 2(mm)[1]	20	20	20	78,750
A431	65	Non-food use; indoor; low-risk and low-toxicity food-grade active ingredient(s); efficacy testing for public health claims required under GLP and following DIS/TSS or AD-approved study protocol	12	12	12	55,000

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 7.—ANTIMICROBIALS DIVISION—NEW USES

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
A440	66	First food use; establish tolerance exemption[1]	21	21	21	26,250
A450	67	First food use; establish tolerance[1]	21	21	21	78,750
A460	68	Additional food use; establish tolerance exemption	15	15	15	10,500
A470	69	Additional food use; establish tolerance	15	15	15	26,250

TABLE 7.—ANTIMICROBIALS DIVISION—NEW USES—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
A480	70	Additional use; non-food; outdoor; FIFRA section 2(mm) uses	9	9	9	15,750
A490	71	Additional use; non-food; outdoor; uses other than FIFRA section 2(mm)	15	15	15	26,250
A500	72	Additional use; non-food; indoor; FIFRA section 2(mm) uses	9	9	9	10,500
A510	73	Additional use; non-food; indoor; uses other than FIFRA section 2(mm)	12	12	12	10,500
A520	74	Experimental Use Permit application	9	9	9	5,250
A521	75	Review of public health efficacy study protocol within AD; per AD Internal Guidance for the Efficacy Protocol Review Process; applicant-initiated; Tier 1	6	4	3	2,000
A522	76	Review of public health efficacy study protocol outside AD by members of AD Efficacy Protocol Review Expert Panel; applicant-initiated; Tier 2	18	15	12	10,000

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

TABLE 8.—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
A530	77	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	3	1,050
A531	78	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner	4	4	4	1,500
A532	85	New product; identical or substantially similar in composition and use to a registered product; registered active ingredient; unregistered source of active ingredient; cite-all data citation except for product chemistry; product chemistry data submitted	4	4	4	4,200
A540	79	New end use product; FIFRA section 2(mm) uses only	4	4	4	4,200
A550	80	New end-use product; uses other than FIFRA section 2(mm); non-FQPA product	6	6	6	4,200
A560	81	New manufacturing-use product; registered active ingredient; selective data citation	12	12	12	15,750
A570	82	Label amendment requiring data submission[1]	4	4	4	3,150
A571	83	Cancer reassessment; applicant-initiated	18	18	18	78,750
A572	84	Refined ecological risk and/or endangered species assessment; applicant-initiated	18	18	12	75,000

[1]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

C. Biopesticides and Pollution Prevention Division (BPPD)

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD tables are presented by type of pesticide rather than by type of action: Microbial and biochemical pesticides, straight chain lepidopteran pheromones (SCLPs), and PIPs. Within each table, the types of application are the same as those in other divisions and use the same terminology as in Unit III. Tables 9 through 11 of Unit V.C. cover BPPD actions.

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTIONDIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B580	86	New active ingredient; food use; establish tolerance[1]	18	18	18	42,000
B590	87	New active ingredient; food use; establish toleranceexemption[1]	16	16	16	26,250
B600	88	New active ingredient; non-food use[1]	12	12	12	15,750
B610	89	Food use; Experimental Use Permit application; establish temporary tolerance exemption	9	9	9	10,500
B620	90	Non-food use; Experimental Use Permit application	6	6	6	5,250
B621	91	Extend or amend Experimental Use Permit	6	6	6	4,200
B630	92	First food use; establish tolerance exemption	12	12	12	10,500
B631	93	Amend established tolerance exemption	9	9	9	10,500
B640	94	First food use; establish tolerance[1]	18	18	18	15,750
B641	95	Amend established tolerance (e.g., decrease or increase)	12	12	12	10,500
B650	96	New use; non-food	6	6	6	5,250
B660	97	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	3	1,050
B670	98	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	6	6	6	4,200
B671	99	New product; food use; unregistered source of active ingredient; requires amendment of established tolerance or tolerance exemption; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	16	16	16	10,500
B672	100	New product; non-food use or food use having established tolerance or tolerance exemption; unregistered source of active ingredient; no data compensation issues; all Tier I data requirements for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	12	12	12	7,500
B680	101	Label amendment requiring data submission[2]	4	4	4	4,200
B681	102	Label amendment; unregistered source of active ingredient; supporting data require scientific review	6	6	6	5,000

TABLE 9.—BIOPESTICIDES AND POLLUTION PREVENTIONDIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS AND AMENDMENTS—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B682	103	Protocol review; applicant-initiated; excludes time for HSRB review (preapplication)	3	3	3	2,000

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 10.—BIOPESTICIDES AND POLLUTION PREVENTIONDIVISION—STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPS)

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B690	104	New active ingredient; food or non-food use[1]	6	6	6	2,100
B700	105	Experimental Use Permit application; new active ingredient or new use	6	6	6	1,050
B701	106	Extend or amend Experimental Use Permit	3	3	3	1,050
B710	107	New product; identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	3	3	3	1,050
B720	108	New product; registered source of active ingredient; all Tier I data for product chemistry, toxicology, non-target organisms, and product performance must be addressed with product-specific data or with request for data waivers supported by scientific rationales	4	4	4	1,050
B721	109	New product; unregistered source of active ingredient	6	6	6	2,200
B722	110	New use and/or amendment to tolerance or tolerance exemption	6	6	6	2,200
B730	111	Label amendment requiring data submission[2]	4	4	4	1,050

[1]All uses (food and/or non-food) included in any original application or petition for a new active ingredient or a first food use that otherwise satisfy the conditions for the category are covered by the base fee for that application.

[2]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTIONDIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B740	112	Experimental Use Permit application; registered active ingredient; non-food/feed or crop destruct basis; no SAP review required[1]	6	6	6	78,750
B750	113	Experimental Use Permit application; registered active ingredient; establish temporary tolerance or tolerance exemption; no SAP reviewrequired[1]	9	9	9	105,000

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTIONDIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B760	114	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct basis; SAP review required; credit $78,750 toward new active ingredient application that follows	12	12	12	131,250
B761	115	Experimental Use Permit application; new active ingredient; non-food/feed or crop destruct; no SAP review required; credit $78,750 toward new active ingredient application that follows	7	7	7	78,750
B770	116	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; SAP review required; credit $105,000 toward new active ingredient application that follows	15	15	15	157,500
B771	117	Experimental Use Permit application; new active ingredient; establish temporary tolerance or tolerance exemption; no SAP review required; credit $105,000 toward new active ingredient application that follows	10	10	10	105,000
B772	118	Amend or extend Experimental Use Permit; minor changes to experimental design; established temporary tolerance or tolerance exemption is unaffected	3	3	3	10,500
B773	119	Amend or extend existing Experimental Use Permit; minor changes to experimental design; extend established temporary tolerance or tolerance exemption	5	5	5	26,250
B860	120	Amend Experimental Use Permit; first food use or major revision of experimental design	6	6	6	10,500
B780	121	New active ingredient; non-food/feed; no SAP reviewrequired[2]	12	12	12	131,250
B790	122	New active ingredient; Non-food/feed; SAP reviewrequired[2]	18	18	18	183,750
B800	123	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; no SAP review required[2]	12	12	12	210,000
B810	124	New active ingredient; establish permanent tolerance or tolerance exemption based on temporary tolerance or tolerance exemption; SAP review required[2]	18	18	18	262,500
B820	125	New active ingredient; establish tolerance or tolerance exemption; no SAP review required[2]	15	15	15	262,500
B840	126	New active ingredient; establish tolerance or tolerance exemption; SAP review required[2]	21	21	21	315,000
B830	127	New active ingredient; Experimental Use Permit application submitted simultaneously; establish tolerance or tolerance exemption; no SAP review required[2]	15	15	15	315,000
B850	128	New active ingredient; Experimental Use Permit requested simultaneously; establish tolerance or tolerance exemption; SAP review required[2]	21	21	21	367,500
B851	129	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; no SAP review required	9	9	9	105,000
B852	130	New active ingredient; different genetic event of a previously approved active ingredient; same crop; no tolerance action required; SAP review required	9	9	9	157,500
B870	131	New use[1]	9	9	9	31,500
B880	132	New product; no SAP review required[3]	9	9	9	26,250

TABLE 11.—BIOPESTICIDE AND POLLUTION PREVENTIONDIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	CR No.	Action	Decision time (months)			FY 08 Registration Service Fee ($)
			FY 08	FY 09	FY 10	
B881	133	New product; SAP review required[3]	15	15	15	78,750
B890	134	Amendment; seed production to commercial registration; no SAP review required	9	9	9	52,500
B891	135	Amendment; seed production to commercial registration; SAP review required	15	15	15	105,000
B900	136	Amendment (except B890); No SAP review required; (e.g., new IRM requirements that are applicant initiated; or amending a conditional registration to extend the registration expiration date with additional data submitted)[4]	6	6	6	10,500
B901	137	Amendment (except B890); SAP review required[4]	12	12	12	63,000
B902	138	PIP Protocol review	3	3	3	5,250
B903	139	Inert ingredient tolerance exemption; e.g., a marker such as NPT II; reviewed in BPPD	6	6	6	52,500
B904	140	Import tolerance or tolerance exemption; processed commodities/food only	9	9	9	105,000

[1]Example: Transfer existing PIP trait by traditional breeding, such as from field corn to sweet corn.
[2]May be either a registration for seed increase or a full commercial registration. If a seed increase registration is granted first, full commercial registration is obtained using B890.
[3]Example: Stacking PIP traits within a crop using traditional breeding techniques.
[4]EPA-initiated amendments shall not be charged fees. Fast-track amendments handled by the Antimicrobials Division are to be completed within the FIFRA stated timelines listed in section 3(h) and are not subject to PRIA fees. Label amendments submitted by notification under PR Notices, such as PR Notice 95–2 and PR Notice 98–10, continue under PR Notice timelines and are not subject to PRIA fees.

VI. How to Pay Fees

Applicants must now submit fee payments at the time of application, and EPA will reject any application that does not contain evidence that the fee has been paid. EPA has developed a web site at*http://www.epa.gov/pesticides/fees/tool/index.htm* to help applicants identify the fee category and the fee. All fees (and other amounts) should be rounded up to the whole dollar. Payments may be made by check, bank draft, or money order or online with a credit card or wire transfer.

A. Online

You may pay electronically through the government payment website*www.pay.gov*.

1. From the pay.gov home page, under ''Find Public Forms.''
2. Select ''search by form name.''
3. On the A-Z Index of Forms page, select ''P.''
4. From the list of forms on the second page, select ''Pre-payment of Pesticide Registration Improvement Act Fee.''
5. Complete the form entering the PRIA fee category and fee.
6. Keep a copy of the pay.gov acknowledgement of payment. A copy of the acknowledgement must be printed and attached to the front of the application to assure that EPA can match the application with the payment.

B. By Check or Money Order

All payments should be in United States currency by check, bank draft, or money order drawn to the order of the Environmental Protection Agency. On the check, the applicant must supply in the information line either the registration number of the product or the company number. A copy of the check must accompany the application to the Agency, specifically attached to the front of the application. The copy of the check ensures that payment has been made at the time of application and will enable the Agency to properly connect the payment with the application sent to the Agency.

If you send the Agency a check, it will be converted into an electronic funds transfer (EFT). This means the Agency will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. The Agency will destroy your original check, but will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize the Agency to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, the Agency may try to make the transfer up to two times.

All paper-based payments should be sent to the following address:

1. *By U.S. Postal Service.* U.S. Environmental Protection Agency, Washington Finance Center, FIFRA Service Fees, P.O. Box 979074,St. Louis, MO 63197–9000.
2. *By courier or personal delivery.* U.S. Bank, Government Lockbox 979074, 1005 Convention Plaza, SL–MO–C2–GL, St. Louis, MO 63197, (314) 418–4990.

VII. How to Submit Applications

Submissions to the Agency should be made at the address given in Unit VIII. The applicant should attach documentation that the fee has been paid which may be a copy of the check or pay.gov payment acknowledgement. If the applicant is applying for a fee waiver, the applicant should provide sufficient documentation as described in FIFRA section 33(b)(7) and*http://www.epa.gov/pesticides/fees/questions/waivers.htm.* The fee waiver request should be easy to identify and separate

from the rest of the application and submitted with documentation that at least 25% of the fee has been paid.

If evidence of fee payment (electronic acknowledgement or copy of check properly identified as to company) is not submitted with the application, EPA will reject the application and will not process it further.

After EPA receives an application and payment, EPA performs a screen on the application to determine that the category is correct and that the proper fee amount has been paid. If either is incorrect, EPA will notify the applicant and require payment of any additional amount due. A refund will be provided in case of an overpayment. EPA will not process the application further until the proper fee has been paid for the category of application or a request for a fee waiver accompanies the application and the appropriate portion of the fee has been paid.

EPA will assign a unique identification number to each covered application for which payment has been made. EPA notifies the applicant of the unique identification number. This information is sent by e-mail if EPA has either an e-mail address on file or an e-mail address is provided on the application.

VIII. Addresses

New covered applications should be identified in the title line with the mail code REGFEE.

1. *By USPS mail*. Document Processing Desk (REGFEE), Office of Pesticide Programs (7504P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

2. *By courier*. Document Processing Desk (REGFEE), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room S–4400,One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202–4501.

Couriers and delivery personnel must present a valid picture identification card to gain access to the building. Hours of operation for the Document Processing Desk are 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides.

Dated: October 23, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Animal and Plant Health Inspection Service

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- Wood packaging material; published 10-30-07

EDUCATION DEPARTMENT

Special education and rehabilitative services:
- Individuals with Disabilities Education Act (IDEA)—
  - Children with disabilities programs; assistance to States; correction; published 10-30-07

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bromoxynil, diclofop-methyl, etc.; published 8-1-07

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list; published 8-16-07

STATE DEPARTMENT

Intercounty Adoption Act of 2000:
- Hague Convention—
  - Convention cases; consular affairs procedures; published 10-30-07

TRANSPORTATION DEPARTMENT

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Airmen certification:
- Flight stimulation device; initial and continuing qualification and use requirements; published 10-30-06

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dates (domestic) produced or packed in California; comments due by 11-6-07; published 9-7-07 [FR 07-04368]

Pistachios grown in California; comments due by 11-6-07; published 9-7-07 [FR 07-04370]

AGRICULTURE DEPARTMENT

Import quota and fees:
- Dairy Import Licensing Program; comments due by 11-5-07; published 10-4-07 [FR 07-04780]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Groundfish; comments due by 11-6-07; published 10-25-07 [FR 07-05292]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 11-5-07; published 10-4-07 [FR 07-04917]

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Defense Acquisition Regulations System

Acquisition regulations:
- Contractors and subcontractors using members of selected reserve; evaluation factor; comments due by 11-5-07; published 9-6-07 [FR E7-17424]
- Security-guard functions; comments due by 11-5-07; published 9-6-07 [FR E7-17436]
- Technical data rights; comments due by 11-5-07; published 9-6-07 [FR E7-17422]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Petroleum refineries; wastewater treatment systems and storage vessels; requirements; comments due by 11-5-07; published 9-4-07 [FR E7-17009]

Air quality implementation plans; approval and promulgation; various States:
- Kentucky; comments due by 11-5-07; published 10-4-07 [FR E7-19327]
- Maryland; comments due by 11-5-07; published 10-4-07 [FR E7-19626]
- North Carolina; comments due by 11-5-07; published 10-5-07 [FR E7-19317]
- Pennsylvania; comments due by 11-5-07; published 10-5-07 [FR E7-19516]
- South Carolina; comments due by 11-8-07; published 10-9-07 [FR E7-19646]

Hazardous waste program authorizations:
- Michigan; comments due by 11-8-07; published 10-9-07 [FR E7-19634]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Satellite communications—
  - Broadcasting-satellite service; policies and service rules; comments due by 11-5-07; published 8-22-07 [FR E7-16565]

FEDERAL TRADE COMMISSION

Trade regulation rules:
- Mail or telephone order merchandise; comments due by 11-7-07; published 9-11-07 [FR E7-17778]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid:
- School administration expenditures and transportation for school-age children; elimination of reimbursement; comments due by 11-6-07; published 9-7-07 [FR 07-04356]

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- Appomattox River, Hopewell, VA; comments due by 11-5-07; published 10-5-07 [FR E7-19676]

INTERIOR DEPARTMENT

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- Rio Grande silvery minnow; nonessential experimental population reintroduction in the Big Bend Reach (of the Rio Grande); comments due by 11-5-07; published 9-5-07 [FR 07-04286]
- Survival enhancement permits—
  - New York; Karner blue butterfly; safe harbor agreement; comments due by 11-9-07; published 10-10-07 [FR E7-19882]

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- Underground mines—
  - Rescue teams; revision of existing standards for training, certification, etc.; comments due by 11-9-07; published 9-6-07 [FR 07-04317]
  - Rescue teams; revision of existing standards for training, certification, etc.; comments due by 11-9-07; published 9-6-07 [FR 07-04318]

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- Homeland Security Department human resources management system; comments due by 11-5-07; published 10-5-07 [FR E7-19574]

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- Cost-of-living allowances (nonforeign areas)—
  - Puerto Rico and Hawaii; rate changes; comments due by 11-5-07; published 9-6-07 [FR E7-17638]

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- Express Mail Corporate Accounts; local trust accounts; cash and check deposits elimination; comments due by 11-9-07; published 10-10-07 [FR E7-19934]

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- Boeing; comments due by 11-5-07; published 9-19-07 [FR E7-18420]
- DG Flugzeugbau GmbH; comments due by 11-5-

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General Electric Co.; comments due by 11-6-07; published 9-7-07 [FR E7-17680]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3233/P.L. 110–107
To designate the facility of the United States Postal Service located at Highway 49 South in Piney Woods, Mississippi, as the "Laurence C. and Grace M. Jones Post Office Building". (Oct. 26, 2007; 121 Stat. 1023)

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