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

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB21

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Office of the Chief Financial Officer, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to amend DOE's October 23, 2007 final rule concerning loan guarantees for projects employing innovative technologies. This final rule removes an extraneous paragraph, originally included in the proposed rule, that was inadvertently retained in the October 23 final rule.

DATES: This rule is effective January 11, 2008.

FOR FURTHER INFORMATION CONTACT: David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, e-mail: *lgprogram@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 2007 (72 FR 60115), DOE promulgated a rule establishing procedures for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (''Act'') (42 U.S.C. 16511–16514). Title XVII authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees for projects that ''(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' (42 U.S.C. 16513(a)) Earlier, on May 16, 2007, the Department had published a Notice of Proposed Rulemaking and Opportunity for Comment (NOPR, 72 FR 27471) to establish regulations for the Title XVII loan guarantee program.

Prior to publication of the final rule, on August 8, 2006, DOE had issued Guidelines for Proposals Submitted in Response to the First Solicitation for loan guarantees. The Guidelines were published in the **Federal Register** on August 14, 2006 (71 FR 46451), and the First Solicitation was issued on August 8, 2006.

II. Discussion of Amendment

Today's final rule amends the October 23, 2007 final rule by removing a paragraph in section 609.1 regarding the application of the final rule to Pre-Applications, Applications, Conditional Commitments, and Loan Guarantee Agreements that were issued or entered into pursuant to the First Solicitation.

DOE proposed in the NOPR that in order to ensure that DOE complied with the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) but did not prejudice Pre-Applicants that responded to the First Solicitation, the regulations would specify that they do not apply to the Pre-Applications, Applications, Conditional Commitments, and Loan Guarantee Agreements issued or entered into pursuant to the First Solicitation. Proposed § 609.1(c)(1). DOE proposed that the only exceptions to this would be the default, recordkeeping, and audit requirements proposed for inclusion in DOE's regulations. Proposed § 609.1(c)(2). DOE also proposed in the NOPR to permit DOE and an Applicant to agree in a Loan Guarantee Agreement entered into pursuant to the First Solicitation that additional provisions of DOE's regulations would apply to the particular project. Proposed § 609.1(c)(3).

DOE received and responded to public comments on these issues in the notice of final rulemaking (72 FR 60132–60133). In the final rule, DOE modified the application of part 609 to those who responded to the First Solicitation by providing that ''[e]xcept as specified in [section 609.1(c)(1)], these regulations apply to all projects and loan guarantees pursuant to Title XVII, including those pursuant to the First Solicitation.'' (72 FR 60133). Thus, the final rule provides that DOE's regulations apply to all projects pursuant to Title XVII, except for section 609.3 (''Solicitations''), section 609.4 (''Submission of pre-applications''), and section 609.5 (''Evaluation of pre-applications''). DOE, however, inadvertently left in the final rule proposed paragraph 609.1(c)(3), re-numbered as paragraph 609.1(c)(2) in the final rule, which would allow DOE and Applicants who submitted Pre-Applications pursuant to the First Solicitation to agree to make additional provisions of Part 609 applicable to their projects. The change in coverage makes this paragraph of section 609.1 superfluous, and DOE removes paragraph (c)(2) with today's final rule.

III. Issuance of a Final Rule

DOE has determined, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), that prior notice and an opportunity for public comment on this rule are unnecessary and there is good cause to waive the requirement for a 30-day delay in effective date. DOE has determined that the revision DOE is making to Part 609 is a technical change or correction about which the public would have no particular interest in providing comments. As explained earlier in this preamble, DOE is revising section 609.1 to remove a paragraph allowing DOE and Applicants who submitted Applications pursuant to the First Solicitation to agree to make other provisions of part 609 applicable to those projects. This paragraph was included inadvertently in the final rule, and is superfluous because 609.1(c)(1) specifies which sections of part 609 do not apply to such Applications.

Based on the foregoing, DOE finds that good cause exists to waive both the requirement to provide prior notice and an opportunity to comment on this rulemaking and the requirement for a 30-day delay in effective date.

IV. Procedural Review Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory

Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act of 1969

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR, part 1021, which applies to a rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOE has found that prior notice and opportunity for public comment are not required for this rulemaking. Therefore, the analytical requirements of the Regulatory Flexibility Act do not apply to today's rule. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

D. Paperwork Reduction Act

This rule does not impose any new collection of information subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. This final rule does not impose a Federal mandate on State, local or tribal governments. The rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. DOE has determined that this rule would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

DOE has determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

DOE has reviewed today's rule under OMB and DOE guidelines concerning dissemination of information to the public and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Today's rule would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this rule. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

V. Approval by the Office of the Secretary of Energy

Issuance of this rule has been approved by the Office of the Secretary.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on January 7, 2008.

Steve Isakowitz,

Chief Financial Officer.

■ For the reasons set out in the preamble, DOE amends part 609 of subchapter H of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

■ 1. The authority citation for part 609 continues to read as follows:

Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 [Amended]

■ 2. Section 609.1 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(1) as paragraph (c).

[FR Doc. E8–325 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

RIN 3245–AF68

Seals and Insignia

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising its regulations specifying the description and authorized use of its official seal. These revisions will further define the authorized and unauthorized use of the official seal by SBA and add criteria for approving and denying requests to use the official seal.

SBA believes that this rule is non-controversial, and the Agency anticipates no significant adverse comment. If SBA receives a significant adverse comment, it will withdraw the rule.

DATES: This rule is effective February 25, 2008 without further action, unless significant adverse comment is received by February 11, 2008. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AF68, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Julie Clowes, Attorney Advisor, Office of

General Counsel, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov*. If you wish to submit comments that contain confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov*, please submit the comments to Julie Clowes, at 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *julie.clowes@sba.gov*. Highlight the comments that you consider to contain the CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Julie Clowes, Office of General Counsel, at (202) 619–0445 or by e-mail at: *julie.clowes@sba.gov*.

SUPPLEMENTARY INFORMATION:

A. Statutory Authority and Background

Section 5(a) of the Small Business Act (15 U.S.C. 634(a)) gives SBA the power to adopt, alter and use a seal which shall be judicially noticed. When initially created, the official seal was only used to certify or authenticate official SBA records. SBA's regulations at 13 CFR 101.105 were narrowly constructed to reflect that one use. Through the years, the Agency has discovered a need to formally identify itself to the public through use of the official seal. This revision to 13 CFR 101.105 broadens SBA's regulatory authority to use its official seal and establishes penalties for unauthorized use.

In order to gain a better understanding of what may or may not be an appropriate use of an official Federal agency seal, SBA first researched the Federal laws affecting use of an agency's seal and the seal regulations of other Federal agencies. The research showed that use of seals by Federal agencies is rather varied. Many agencies authorize use for marketing and outreach purposes such as awards, certificates, plaques, flags, business cards, signage and publications. Because this type of use identifies with the mission of the Agency, SBA incorporated these marketing uses into the revised regulations.

Additionally, SBA identified unauthorized uses of the seal, emphasizing the need to prevent an actual or implied endorsement of a commercial product or service. A subsection on how to request written permission from the Administrator to use the SBA seal and a statement of the penalties, as defined in the U.S. Code, were also incorporated into the revised regulations.

The Agency believes there is good cause to bypass notice and comment and proceed to a direct final rule pursuant to 5 U.S.C. 553(b). The rule is non-controversial and merely alters who may use SBA's official seal and for what purpose. Because this rule only impacts Agency procedure and practice, notice and comment is unnecessary. Although SBA believes this direct final rule will not elicit any significant adverse comments, if such comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register**.

B. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This rule meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

This rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this rule has no federalism implications warranting preparation of a federalism assessment.

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. In this case, the regulations address the administrative requirements for the Agency's use of its official seal. In other words, this rule will not result in the direct regulation of small entities, so no further analysis is required by the RFA. Therefore, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of RFA.

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations, Intergovernmental relations, Investigations, Organizations and functions, Reporting and recordkeeping requirements, Seals and insignia.

■ For the reasons set forth in the preamble, amend part 101 of title 13 of the Code of Federal Regulations as follows:

PART 101—ADMINISTRATION

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

■ 2. Revise § 101.105 to read as follows:

§ 101.105 Who may use SBA's official seal and for what purpose?

(a) *General.* This section describes the official seal of the SBA and prescribes rules for its use.

(b) *Official Seal.* The official seal of the SBA is illustrated below.

(c) *Authorized Use.* The official seal and reproductions of the seal may only be used as follows:

(1) Certify and authenticate originals and copies of any books, records, papers or other documents on file within SBA or extracts taken from them or to provide certification for the purposes authorized in 28 U.S.C. 1733;

(2) SBA award certificates and medals;

(3) SBA awards for career service;

(4) Security credentials and employee identification cards;

(5) Business cards for SBA employees;

(6) Official SBA signs;

(7) Plaques; the design of the SBA seal may be incorporated in plaques for display in Agency auditoriums, presentation rooms, lobbies, offices and on buildings occupied by SBA;

(8) The SBA flag;

(9) Officially authorized reports or publications of the SBA; or

(10) For such other purposes as determined necessary by the Administrator.

(d) *Unauthorized use.* The official seal shall not be used, except as authorized by the Administrator, in connection with:

(1) Contractor operated facilities;

(2) Souvenir or novelty items;

(3) Toys or commercial gifts or premiums;

(4) Letterhead design, except on official SBA stationery;

(5) Clothing or equipment; or

(6) Any article which may disparage the seal or reflect unfavorably upon SBA.

(e) SBA's seal will not be used in any manner which implies SBA endorsement of commercial products or services or of the user's policies or activities.

(f) *Reproduction of Official Seal.* Requests for permission to reproduce the SBA seal in circumstances other than those listed in paragraph (c) of this section must be made in writing to the Administrator. The decision whether to grant permission will be made in writing on a case-by-case basis, in consultation with the General Counsel, with consideration of any relevant factors which may include the benefit or cost to the Agency of granting the request; the unintended appearance of endorsement or authentication by SBA; the potential for misuse; the reputability of the use; the extent of control by SBA over the use; and the extent of control by SBA over distribution of any products or publications bearing the SBA seal.

(g) *Penalties for Unauthorized Use.* Fraudulent or wrongful use of SBA's seal can lead to criminal penalties under 18 U.S.C. 506 or 18 U.S.C. 1017.

Dated: January 4, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–338 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0047; Directorate Identifier 2007–NM–197–AD; Amendment 39–15329; AD 2008–01–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

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

* * * * *

The Bombardier CL–600–2B19 airplanes have had a history of flap failures at various positions for several years. Flap failure may result in a significant increase in required landing distances and higher fuel consumption than planned during a diversion. * * *

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

DATES: This AD becomes effective February 15, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 5, 2007 (72 FR 46555, August 21, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 17, 2007 (72 FR 58763) and proposed to supersede AD 2007–17–07, Amendment 39–15165 (72 FR 46555, August 21, 2007). That NPRM proposed to correct an unsafe condition for the specified products.

That NPRM proposed to retain the requirements of AD 2007–17–07, i.e., revising the airplane flight manual (AFM) to incorporate Canadair Regional Jet Temporary Revision (TR) RJ/165, dated July 6, 2007, into the AFM; adding operational procedures into the AFM; training flight crewmembers and operational control/dispatch personnel on the operational procedures; and doing corrective ''maintenance actions.''

That NPRM also proposed to require training flight crewmembers on reduced or zero flap landing, and doing additional corrective ''maintenance actions'' that include a pressure test of the flexible drive-shaft, and corrective actions if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Exclude Certain Parts From Inspection

Comair requests that we exclude from the proposed actions actuators with less than 2,000 flight hours since new or since repair as of July 12, 2007 (the issue date of Bombardier Service Bulletin 601R–27–150). Comair states that those actuators would not require the inspections of Part C of the Accomplishment Instructions of the service bulletin. Comair suggests that paragraph ''(f)(3)'' of the NPRM contain a statement qualifying under what conditions flap actuators must comply with Part C of the service bulletin by stating that new actuators, and those recently repaired where it can be shown that the inboard pinion shaft seals, part numbers (P/Ns) 853SC177–1/–2, were replaced, should be exempt from Part C (low temperature torque check test).

We infer that Comair meant to refer to paragraph (g)(3) of the NPRM. We referred to Bombardier Service Bulletin 601R–27–150 as the appropriate source of service information for accomplishing the actions specified in paragraph (g)(3) of the NPRM. Paragraph (g)(3) of the NPRM proposes to require doing actions in accordance with Part C of the service bulletin. We agree that the actions specified in paragraph (g)(3) of this AD apply only to certain actuators as specified in paragraph 1.D.,

''Compliance,'' of the service bulletin. The actions in paragraph (g)(3) of this AD do not apply to new actuators with 2,000 or fewer flight hours and repaired actuators that have 2,000 or fewer flight hours since the pinion seals were changed. We have coordinated with TCCA, and we have revised paragraph (g)(3) of this AD to clarify which airplanes are subject to that paragraph.

Request To Remove Requirement Specified in Paragraph (g)(3) of the NPRM

Mesaba Airlines requests that we remove the requirement proposed in paragraph (g)(3) of the NPRM to do a low temperature torque test of the flap actuators and all applicable corrective actions. Mesaba Airlines states that Bombardier and the flap actuator manufacturer (Eaton) are very close to certifying a new seal for the flap actuator. Mesaba Airlines explains that this new seal is intended to fix the internal fluid leakage issue in the actuator that could result in an actuator problem (and result in the actuator failing the low temperature torque test). Mesaba Airlines notes that once the modified flap actuator is certified, a fleet retrofit with the modified actuator would result in a more robust fix for the actuator issue.

Mesaba Airlines further states that there is no guarantee currently that an actuator installed to replace an actuator that fails the low temperature torque test would not have the same issue shortly after installation (negating the benefit of performing the test). Mesaba Airlines concludes that the flight operations requirements instituted under AD 2007–17–07 provide an acceptable margin of safety until the modified actuator becomes available for retrofit.

We disagree with the request to remove the requirement specified in paragraph (g)(3) of this AD. Bombardier and TCCA are discussing possible terminating action for Part C (low temperature torque test) of Bombardier Service Bulletin 601R–27–150. Although it has been proposed that the replacement of the current actuators with actuators incorporating the new inboard seal should be terminating action for the actuator cold soak requirement specified in Part C of the service bulletin, this has not yet been agreed to. Additionally, the new seal is still undergoing endurance testing at Eaton and is not yet approved.

Once this new seal is developed, approved, and available, we might consider additional rulemaking. The actions specified in paragraph (g)(3) of this AD are intended to mitigate the potential of flap failures utilizing the solutions that are currently available. We have not revised this AD in this regard. However, according to the provisions of paragraph (h)(1) of the AD, operators may request an alternative method of compliance if the request includes data that prove that the new action would provide an acceptable level of safety.

In regard to Mesaba Airlines' statement that there is no guarantee that a replacement actuator installed to replace an actuator failing the low temperature torque test would not have the same issue shortly after installation, we acknowledge that there is no guarantee that a replacement unit will not fail. However, replacing a known contaminated unit with a new unit, as required by paragraph (g)(3) of this AD, adequately addresses the identified unsafe condition. The actions in paragraph (g)(3) mitigate the risk of a failure as time in service increases.

As stated earlier, we have revised paragraph (g)(3) of this AD to clarify that the actions apply only to certain actuators with more than 2,000 flight hours since new or actuators that have accumulated more than 2,000 flight hours since the pinion shaft seals were replaced. Bombardier has determined that the effects of oil contamination typically do not manifest until the actuators have accumulated over 6,000 flight hours, depending on aircraft utilization. The 24-month compliance time specified in paragraph (g)(3) of this AD is necessary to ensure that actuators that are in the range of 6,000 flight hours are inspected. We have not revised this AD in this regard.

Request To Allow Another Method of Compliance With Part C of the Service Bulletin

Comair also requests that we allow the replacement of the inboard pinion shaft seals, P/Ns 853SC177–1/–2, as a method of compliance with Part C of the service bulletin. Comair notes that it has had and will have many actuators removed in accordance with Maintenance Requirement Manual, Certification Maintenance Requirements (CMR) Task C27–50–111–10, Functional Check of the Inboard Flap Actuator Torque Limiter. Comair states that actuators removed to comply with this CMR task should not also be subject to Part C of the service bulletin because the CMR task is an example of an event when the pinion seals must be replaced.

We agree with the commenter that replacement actuators with inboard pinion shaft seals, P/Ns 853SC177–1/–2, are not subject to the actions in Part C of the service bulletin. As specified in paragraph 1.D., ''Compliance,'' of the service bulletin, Part C only applies to certain actuators with more than 2,000 flight hours since new or since repair where it can be shown that the inboard pinion shaft seals P/Ns 853SC177–1/–2 were replaced. As stated previously, we have revised paragraph (g)(3) of this AD to clarify the actuators subject to the actions in that paragraph. If a repair was done and the inboard pinion shaft seals were replaced, the actuator would not be subject to Part C of the service bulletin unless the part had over 2,000 flight hours since the seal replacement.

Request To Allow Previous Alternative Methods of Compliance (AMOCs)

Comair also requests that we add to the AMOC paragraph of this AD a statement that AMOCs approved previously according to AD 2007–17–07 are approved as AMOCs for the corresponding provisions of this AD.

We agree that AMOCs approved previously in accordance with AD 2007–17–07 are acceptable for compliance with the corresponding provisions of this AD. We have revised paragraph (h)(1) of this AD accordingly.

Request To Remove Requirements

Larry Nelson, a private citizen, states that the training requirements in AD 2007–17–07 and paragraphs (f)(3) and (g)(1) of the NPRM do not meet the requirements of sections 39.3 and 39.5 of the Federal Aviation Regulations (14 CFR 39.3 and 14 CFR 39.5). The commenter notes that section 14 CFR 39.3 states that rules ''* * * apply to the following products: Aircraft, aircraft engines, propellers, and appliances.'' The commenter concludes that the training specified in the NPRM has nothing to do with the aircraft.

The commenter adds that paragraphs (a) and (b) of section 14 CFR 39.5 state, ''An unsafe condition exists in the product;'' and ''the condition is likely to exist or develop in other products of the same type design.'' The commenter states that the perceived unsafe condition, although part of the aircraft, actually applies to the specific parts mentioned in paragraphs (f)(1), (g)(2), and (g)(3) of the NPRM (flap flex shafts and flap actuators).

We infer that the commenter requests we remove the requirements for training and for doing any actions related to parts (and not the airplane itself) from the NPRM. We disagree. Section 14 CFR 39.11 describes the types of actions that ADs can require, including ''conditions and limitations you must comply with.'' In section 14 CFR 39.11, we intended to retain broad authority to require whatever types of corrective actions are

determined to be most effective in addressing identified unsafe conditions.

In this AD, we have found that one of the factors contributing to the identified unsafe condition is lack of training in operating an airplane when flap failure occurs in-flight (such as in freezing conditions). Due to the unsafe condition, we determined that these training requirements, in conjunction with the other requirements of this AD, are necessary to safely operate the airplane; and you must comply with them if you are an operator.

As for the commenter's statement that the unsafe condition only applies to the part and not the airplane itself, we do not agree. We routinely issue ADs against the product that has a part installed that we have found to be unsafe. The AD applies to the product, and not the parts themselves, because parts that are not installed on operated products do not create an unsafe condition. As stated above, we determined that inadequate training and operating limitations also contributed to the unsafe condition of this AD. We have not revised the AD in this regard.

Request for Clarification of Compliance

Larry Nelson also requests clarification on how to provide compliance documentation for the operations/dispatch and flight crewmembers' training specified in paragraph (f)(3) of this AD. The commenter states that section 39.11 of the Federal Aviation Regulations (14 CFR 39.11) specifies, ''Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve an unsafe condition.'' The commenter states that this requirement would be met until one or more parts are changed. The commenter notes that since this NPRM is written against the airplane and does not include the specific parts addressed in the AD, NPRM, and service bulletin, it would therefore be difficult to manage.

We find that clarification is necessary. As stated in paragraph (f)(3) of this AD, the training on the information in paragraph (f)(2) of this AD must be approved by the Principal Operations Inspector (POI). The method for documenting compliance should be included in the training approved by the POI. However, the method in which operators implement training in their operations and the method in which operators document compliance may vary greatly. Therefore, we have not included that information in this AD. We have not revised this AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 684 products of U.S. registry. We also estimate that it will take about 27 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,477,440, or $2,160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15165 (72 FR 46555, August 21, 2007) and adding the following new AD:

2008–01–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–15329. Docket No. FAA–2007–0047; Directorate Identifier 2007–NM–197–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 15, 2008.

Affected ADs

(b) This AD supersedes AD 2007–17–07, Amendment 39–15165.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7990 and 8000 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

* * * * *

The Bombardier CL–600–2B19 airplanes have had a history of flap failures at various positions for several years. Flap failure may result in a significant increase in required landing distances and higher fuel consumption than planned during a diversion. * * *

* * * * *

This AD retains the requirements of AD 2007–17–07, i.e., revising the airplane flight manual (AFM) to incorporate a temporary revision into the AFM; adding operational procedures into the AFM; training flight crewmembers and operational control/dispatch personnel on the operational procedures; and doing corrective ''maintenance actions.'' The corrective ''maintenance actions'' include the cleaning and lubrication of the flexible shafts, and applicable related investigative and corrective actions (which include a detailed inspection of the actuator connector sealant bead for signs of damage or delamination, repair of damaged sealant, and if necessary, a low temperature torque check on the actuator and if torque test results are not satisfactory, an installation of a serviceable actuator or, if no serviceable actuators are available, contacting the FAA for corrective action), and installing metallic seals in the flexible drive-shafts, and applicable related investigative and corrective actions (which include a detailed inspection of the mating surfaces on the flexible drive-shaft for damage (scratches or dents), and if mating surfaces have damage, cleaning the sealing washer and mating surfaces and applying sealant). This AD also requires training flight crewmembers on reduced or zero flap landing and doing additional corrective ''maintenance actions'' that include a pressure test of the flexible drive-shaft and corrective actions (which include replacing any flexible drive-shaft that exhibits leakage (any sign of bubbles within one minute during the pressure test in water) with a serviceable flexible drive-shaft), and a low temperature torque test of the flap actuators and corrective actions (which include installation of a serviceable actuator if torque test results are not satisfactory).

Restatement of Requirements of AD 2007–17–07

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

(1) Part I. Airplane Flight Manual (AFM) Change: Within 30 days after September 5, 2007 (the effective date of AD 2007–17–07), revise the Canadair Regional Jet Airplane Flight Manual CSP A–012, by incorporating the information in Canadair Regional Jet Temporary Revision (TR) RJ/165, dated July 6, 2007, into the AFM.

Note 1: The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/165, dated July 6, 2007, into the Canadair Regional Jet Airplane Flight Manual CSP A–012. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM.

(2) Part II. Operational Procedures: Within 30 days after September 5, 2007, revise the Limitations Section of the Canadair Regional Jet Airplane Flight Manual CSP A–012, to include the following statement. This may be done by inserting a copy of paragraph (f)(2) of this AD in the AFM.

''1. Flap Extended Diversion

Upon arrival at the destination airport, an approach shall not be commenced, nor shall the flaps be extended beyond the 0 degree position, unless one of the following conditions exists:

a. When conducting a precision approach, the reported visibility (or RVR) is confirmed to be at or above the visibility associated with the landing minima for the approach in use, and can be reasonably expected to remain at or above this visibility until after landing; or

b. When conducting a non-precision approach, the reported ceiling and visibility (or RVR) are confirmed to be at or above the ceiling and visibility associated with the landing minima for the approach in use, and can be reasonably expected to remain at or above this ceiling and visibility until after landing; or

c. An emergency or abnormal situation occurs that requires landing at the nearest suitable airport; or

d. The fuel remaining is sufficient to conduct the approach, execute a missed approach, divert to a suitable airport with the flaps extended to the landing position, conduct an approach at the airport and land with 1000 lb (454 kg) of fuel remaining.

Note 1: The fuel burn factor (as per AFM TR/165) shall be applied to the normal fuel consumption for calculation of the flaps extended missed approach, climb, diversion and approach fuel consumption.

Note 2: Terrain and weather must allow a minimum flight altitude not exceeding 15,000 feet along the diversion route.

Note 3: For the purpose of this AD, a ''suitable airport'' is an airport that has at least one usable runway, served by an instrument approach if operating under Instrument Flight Rules (IFR), and the airport is equipped as per the applicable regulations and standards for marking and lighting. The existing and forecast weather for this airport shall be at or above landing minima for the approach in use.

2. Flap Failure After Takeoff

When a takeoff alternate is filed, terrain and weather must allow a minimum flight altitude not exceeding 15,000 feet along the diversion route to that alternate, or other suitable airport. The fuel at departure shall be sufficient to divert to the takeoff alternate or other suitable airport with the flaps extended to the takeoff position, conduct and approach and land with 1000 lb (454 kg) of fuel remaining.

Note: The fuel burn factor (as per AFM TR/165) shall be applied to the normal fuel consumption for calculation of the flaps extended, climb, diversion and approach fuel consumption.

3. Flap Zero Landing

Operations where all useable runways at the destination and alternate airports are forecast to be wet or contaminated (as defined in the AFM) are prohibited during the cold weather season (December to March inclusive in the northern hemisphere) unless one of the following conditions exists:

a. The flap actuators have been verified serviceable in accordance with Part C (Low Temperature Torque Test of the Flap Actuators) of SB 601R–27–150, July 12, 2007, or

b. The flight is conducted at a cruise altitude where the SAT is −60 °C or warmer. If the SAT in flight is colder than −60 °C, descent to warmer air shall be initiated within 10 minutes, or

c. The Landing Distance Available on a useable runway at the destination airport is at least equal to the actual landing distance required for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions, or

d. The Landing Distance Available on a useable runway at the filed alternate airport, or other suitable airport is at least equal to the actual landing distance for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

Note 1: If the forecast destination weather is less than 200 feet above DH or MDA, or less than 1 mile (1500 meters) above the authorized landing visibility (or equivalent RVR), as applied to the usable runway at the destination airport, condition 3.a., 3.b., or 3.d. above must be satisfied.

Note 2: When conducting No Alternate IFR (NAIFR) operations, condition 3.a., 3.b., or 3.c. above must be satisfied.''

(3) Part III. Training: As of 30 days after September 5, 2007, no affected airplane may be operated unless the flight crewmembers of that airplane and the operational control/dispatch personnel for that airplane have received training that is acceptable to the Principal Operations Inspector (POI) on the operational procedures required by paragraph (f)(2) of this AD.

(4) Part IV. Maintenance Actions: Within 120 days after September 5, 2007, do the cleaning and lubrication of the flexible shafts, installation of metallic seals in the flexible drive-shafts, and all applicable related investigative and corrective actions by doing all the applicable actions specified in ''PART A'' of the Accomplishment Instructions of Bombardier Service Bulletin

601R–27–150, dated July 12, 2007; except if torque test results are not satisfactory, before further flight, install a serviceable actuator in accordance with the service bulletin or, if no serviceable actuators are available, contact the Manager, New York Aircraft Certification Office, FAA, for corrective action. Do all applicable related investigative and corrective actions before further flight.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, do the following actions.

(1) As of November 30, 2008, no affected airplane may be operated unless the flight crewmembers of that airplane have received simulator training on reduced or zero flap landing that is acceptable to the POI. Thereafter, this training must be done during the normal simulator training cycle, at intervals not to exceed 12 months.

(2) Within 24 months or 4,000 flight hours after the effective date of this AD, whichever occurs first: Do a pressure test of the flexible drive-shaft, and do all applicable corrective actions, by doing all the applicable actions specified in ''PART B'' of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. Do all applicable corrective actions before further flight.

(3) For airplanes having flap actuators, part numbers (P/Ns) 852D100–19/–21, 853D100–19/–20, and 854D100–19/–20, specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD: Within 24 months after the effective date of this AD, do a low temperature torque test of the flap actuators, and do all applicable corrective actions, by doing all the applicable actions specified in ''PART C'' of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. Do all applicable corrective actions before further flight.

(i) Airplanes having actuators that have not been repaired and that have accumulated more than 2,000 flight hours since new.

(ii) Airplanes having actuators that have been repaired and that have accumulated more than 2,000 flight hours on the inboard pinion shaft seals, P/Ns 853SC177–1/–2.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The maintenance tasks specified in the first row of the table in ''Part IV. Maintenance Actions'' of the MCAI do not specify a corrective action if an actuator is not serviceable (*i.e.*, torque test results are not satisfactory). However, this AD requires contacting the FAA or installing a serviceable actuator before further flight if torque test results are not satisfactory. (Reference paragraph (f)(4) of this AD.)

(2) Although paragraph 2. of ''Part III. Training'' of the MCAI recommends accomplishing the initial training within 1 year, this AD requires accomplishing the training before November 30, 2008, in order to ensure that the actions are completed prior to the onset of cold weather operations.

(3) The MCAI does not specify which actuators are applicable to the actions specified in ''Part C'' of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. This AD requires that ''Part C'' of the service bulletin only be done for the actuators specified in paragraph (g)(3) of this AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO. AMOCs approved previously in accordance with AD 2007–17–07 are approved as AMOCs for the corresponding provisions of this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2007–10, dated July 18, 2007; Bombardier Service Bulletin 601R–27–150, dated July 12, 2007; and Canadair Regional Jet Temporary Revision RJ/165, dated July 6, 2007, to the Canadair Regional Jet Airplane Flight Manual CSP A–012; for related information.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 601R–27–150, including Appendix A, dated July 12, 2007; and Canadair Regional Jet Temporary Revision RJ/165, dated July 6, 2007, to the Canadair Regional Jet Airplane Flight Manual CSP A–012; as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 601R–27–150, including Appendix A, dated July 12, 2007; and Canadair Regional Jet Temporary Revision RJ/165, dated July 6, 2007, to the Canadair Regional Jet Airplane Flight Manual CSP A–012 on September 5, 2007 (72 FR 46555, August 21, 2007).

(2) For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

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

Issued in Renton, Washington, on January 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–249 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0374; Directorate Identifier 2007–SW–02–AD; Amendment 39–15313; AD 2007–26–11]

RIN 2120–AA64

Airworthiness Directives; Intertechnique Zodiac Aircraft Systems, Oxygen Reserve Cylinders

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain oxygen reserve cylinders. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country with which we have a bilateral agreement to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is issued following information concerning the risk of high-pressure oxygen cylinder tearing with sudden emptying. These cylinders are used for missions at high altitudes or to ensure respiratory air for passengers feeling sick.

It has been demonstrated that the material characteristics of the Aluminum Alloy 5283 (AA5283) from which the cylinders are manufactured deteriorate in the course of time and may possibly lead these oxygen cylinders to tear and abruptly vent aboard an aircraft.

This unsafe condition requires immediate action due to the risk of oxygen cylinders exploding on board an aircraft and creating a fire hazard. This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective January 28, 2008.

We must receive comments on this AD by March 11, 2008.

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://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 economic evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for the member states of the European community, has issued EASA AD No. 2006–0286R1, dated March 22, 2007, to correct an unsafe condition for the specified products.

The MCAI states:

> This Airworthiness Directive (AD) is issued following information concerning the risk of high-pressure oxygen cylinder tearing with sudden emptying. These cylinders are used for missions at high altitudes or to ensure respiratory air for passengers feeling sick.
>
> It has been demonstrated that the material characteristics of the Aluminum Alloy 5283 (AA5283) from which the cylinders are manufactured deteriorate in the course of time and may possibly lead these oxygen cylinders to tear and abruptly vent aboard an aircraft.

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

Relevant Service Information

Intertechnique has issued Service Bulletin No. GLD/GLF–35–150, dated September 20, 2006 and Eurocopter has issued Alert Service Bulletin Nos. 05.00.54 for the Model AS350B3 helicopters and 05.42 for the Model SA 315B helicopters, both dated August 16, 2006. The actions described in the MCAI are intended to correct the same unsafe condition identified in the service information.

FAA's Determination and Requirements of This AD

The Model Airbus 300 series; Pilatus P–6; Dassault Aviation Mystere-Falcon 20; Falcon 50, Falcon 200, and Falcon 900 airplanes; Eurocopter AS350 and Eurocopter SA315 helicopters; and other aircraft may be equipped with these oxygen reserve cylinders, which are not approved by the Department of Transportation (DOT). Without the DOT approval, these oxygen reserve cylinders are not eligible for use in aircraft operating in the United States. Pursuant to our bilateral agreement with France, the State of Design, we have been notified of the unsafe condition described in the MCAI and service information. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on aircraft of various type designs.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, we have made the following changes:

- The MCAI requires removal of the affected oxygen cylinders at specific time intervals; however, this AD requires removal before further flight.
- The MCAI requires certain procedures to be used for emptying the cylinders as well as certain action for cylinders held as spares.

These actions are beyond the scope of the action needed to correct this unsafe condition and are not included in this AD. These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section of this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the risk of oxygen cylinders exploding on board an aircraft and creating a fire hazard. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0374; Directorate Identifier 2007–SW–02–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://regulations.gov* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect about 468 aircraft of U.S. registry. We also estimate that it will take about ½ of a work-hour per aircraft to remove the cylinders. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD on U.S.

operators to be $4000, assuming that oxygen cylinders are installed on 100 aircraft.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–11 Intertechnique Zodiac Aircraft Systems: Amendment 39–15313. Docket No. FAA–2007–0374; Directorate Identifier 2007–SW–02–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 28, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Intertechnique (F5341), aluminum alloy AA5283, oxygen cylinders manufactured by Societe Metallurgique de Gerzat SAS with GLD series, GLF series, PC2300 or SLF300 part numbers, installed in any aircraft certificated in any category. These oxygen reserve cylinders are installed on but not limited to Model Airbus 300 series; Pilatus P–6; Dassault Aviation Mystere-Falcon 20, Falcon 50, Falcon 200, and Falcon 900 airplanes; and Eurocopter AS350 and Eurocopter SA315 helicopters.

Reason

(d) The mandatory continued airworthiness information (MCAI) states:

This Airworthiness Directive (AD) is issued following information concerning the risk of high-pressure oxygen cylinder tearing with sudden emptying. These cylinders are used for missions at high altitudes or to ensure respiratory air for passengers feeling sick.

It has been demonstrated that the material characteristics of the Aluminum Alloy 5283 (AA5283) from which the cylinders are manufactured deteriorate in the course of time and may possibly lead these oxygen cylinders to tear and abruptly vent aboard an aircraft.

Actions and Compliance

(e) Unless already done, remove any affected oxygen reserve cylinder before further flight.

Differences Between the FAA AD and the MCAI

(f) This AD differs from the MCAI as follows:

(1) The MCAI requires removal of the affected oxygen cylinders at specific time intervals; however, this AD requires removal before further flight.

(2) The MCAI requires certain procedures to be used for emptying the cylinders as well as certain action for cylinders held as spares. These actions are beyond the scope of the action needed to correct this unsafe condition and are not included in this AD.

Subject

(g) Air Transport Association of America (ATA) Code 3530: Portable Oxygen System.

Other Information

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Uday Garadi, Aviation Safety Engineer, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive No. 2006–0286R1, dated March 22, 2007; Intertechnique Service Bulletin No. GLD/GLF–35–150, dated September 20, 2006; and Eurocopter Alert Service Bulletin Nos. 05.00.54 for the Model AS350B3 and 05.42 for the Model SA315B, both dated August 16, 2006, contain related information.

Issued in Fort Worth, Texas, on December 3, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–25391 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0096]

RIN 0960–AG40

Methods for Conducting Personal Conferences When Waiver of Recovery of a Title II or Title XVI Overpayment Cannot Be Approved

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our title II regulations and adding title XVI regulations on personal conferences when waiver of recovery of an overpayment cannot be approved. These final rules allow for the conferences to be conducted face-to-face, by telephone, or by video teleconference in these circumstances.

DATES: These final rules are effective February 11, 2008.

FOR FURTHER INFORMATION CONTACT: Robin Strauss, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7944, for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Background

Our existing regulations at § 404.506 state that we will waive recovery of a title II overpayment if the individual was without fault in causing the overpayment and if recovery would defeat the purpose of title II of the Social Security Act or be against equity and good conscience. Section 404.506 further states that, if we cannot approve waiver after reviewing the information the individual has given to support his or her contention that the recovery of the overpayment should be waived, we will offer the individual a personal conference. The personal conference policy was established so that the decisionmaker would have the opportunity to assess an individual's contention through personal, versus written, contact. Our existing regulations at § 416.550 state that we will waive recovery of a title XVI overpayment if the individual was without fault in causing the overpayment and if recovery would either defeat the purpose of title XVI, or be against equity and good conscience, or impede the efficient administration of title XVI. There is currently no title XVI regulation regarding personal conferences.

Section 404.506(e)(1) states that the individual is given the opportunity to ''appear personally'' at the personal conference. Current regulations do not further specify the method in which this appearance may be made. Our longstanding policy contained in Social Security Ruling (SSR) 94–4p, which implemented the decisions in *Buffington, et al.* v. *Schweiker* and *Califano* v. *Yamasaki*, provides that a face-to-face pre-recoupment hearing will be conducted prior to the denial of waiver of recovery of an overpayment. However, a face-to-face appearance at the field office is not always convenient for the beneficiary. Often, if an individual is not able to come to the face-to-face conference, field office personnel will go to the person to hold the conference. Offering additional appearance options for the conference would improve service to the beneficiaries and reduce costly home visits by field personnel.

In order to fulfill our stewardship responsibilities to the Social Security trust fund, we must employ methods that will simplify our personal conference procedures and use our resources most efficiently. We should be using all available technology when we conduct personal conferences. Therefore, we are revising the regulations to allow for personal conferences to be conducted face-to-face at a place we designate (usually in the field office), by telephone, or by video teleconference. We will give the choice to the individual; the individual will still be provided the opportunity to appear face-to-face by choosing to come to us for the personal conference, or may choose to participate by telephone or video teleconference. If the individual elects to conduct the personal conference by video teleconference, the individual will designate the location for his or her end of the video teleconference. Any individual who is interested in conducting the personal conference by video teleconference can contact us for additional information and assistance with this process. Because we are offering claimants two new and convenient ways to participate in a personal conference—in addition to the face-to-face conferences at our field offices we currently offer—we believe the need for our personnel to make costly home visits will significantly decrease. Therefore, we will consider conducting face-to-face conferences at locations other than SSA field offices only on a case-by-case basis, and only in those limited circumstances where: (a) a claimant has exhausted all other means of obtaining a personal conference, and (b) conducting a personal conference by any other means would be so inadequate, owing to a claimant's physical or mental condition, as to infringe upon the person's right to a hearing. This process is in no way meant to circumscribe an individual's right to reasonable accommodation or to relieve SSA of our responsibility to provide such accommodation in accordance with 29 U.S.C. 794.

These final rules will not affect the individual's right to review the claims file, have a representative present for the proceedings, cross-examine witnesses, or submit documentary evidence. Those provisions will not change. For example, claimants who choose to conduct the personal conference via telephone or video teleconference will be given an opportunity to submit documentary evidence by mail or fax prior to the scheduled conference. If necessary, the conference could be rescheduled to allow claimants time to do this. In conducting the personal conference face-to-face at a place we designate, by telephone, or by video teleconference, we will be fulfilling our stewardship responsibilities while offering an additional convenience to the individual and continuing to protect the individual's right to present his or her contention that he or she meets the requirements for waiver of recovery of an overpayment. The decisionmaker will still be able to properly assess the person's contentions regarding fault under these new procedures.

We already successfully conduct some hearings by telephone and by video teleconference. For example, the administrative review of an initial determination for Medicare Part D subsidies is conducted either by a telephone hearing or a case review. See § 418.3625. Additionally, some administrative hearings to review claims under title II (including administrative law judge review of denial of waiver based on a personal conference), and other claims under title XVI are now conducted via video teleconferencing. See §§ 404.936 and 416.1436. Our experience in these contexts has demonstrated that these procedures adequately protect a claimant's due process rights.

Explanation of Changes

We are changing the regulations in 20 CFR parts 404 and 416 to reflect the methods for conducting personal conferences when waiver of recovery of an overpayment cannot be approved as follows:

- We are changing the regulations at § 404.506 to reflect the various methods we can use to conduct the personal conference. These methods are: face-to-face in a location we designate (usually in the field office), via telephone, or via video teleconference.
- Currently, part 416 has no reference to personal conferences when waiver of recovery of the overpayment cannot be approved. We are adding a new section that is similar to the regulations at § 404.506. New § 416.557 includes the various methods we can use to conduct the personal conference and describes the individual's rights and

responsibilities regarding the personal conference.

Since SSR 94–4p only provides for a pre-recoupment hearing that is conducted face-to-face before waiver of recovery of an overpayment can be denied, the changes in §§ 404.506 and 416.557 expand that policy. Therefore, we are also publishing a notice rescinding SSR 94–4p concurrently with the effective date of these final rules on the same day we publish these final rules.

Public Comments

On March 5, 2007, we published proposed rules in the **Federal Register** at 72 FR 9709 and provided a 60-day comment period. We received comments from two organizations and one individual. The comments from the individual were totally supportive of the proposed rules, noting that the rule will provide beneficiaries with practical options for presenting further evidence in favor of waiver of recovery, even when they cannot appear at the SSA office for a face-to-face conference. We carefully considered all of the comments in publishing these final rules. Because some of the comments were long and quite detailed, we have condensed, summarized and paraphrased them in the following discussion. However, we have tried to present all views adequately and to address carefully all of the significant issues raised by the commenters that are within the scope of the proposed rules. We have not addressed in this preamble comments that are outside the scope of the rulemaking proceeding.

Comment: Both organizations which commented raised the concern that the regulations were not consistent with SSA's obligation under Section 504 of the Rehabilitation Act to provide reasonable accommodation for disabled individuals. In support of this proposition, both commenters cited the example in the preamble. This example said that SSA would consider conducting a face-to-face personal conference at a location other than an SSA field office where the claimant was deaf and bedridden. The commenters were concerned that this implies that SSA will only provide accommodation and accessibility measures to the most severely limited program participants and not to all persons with disabilities.

Response: The example in the preamble was not intended to represent the only type of situation in which SSA would consider conducting a face-to-face personal conference at a location other than an SSA field office. These requests will be decided on a case-by-case basis and will be consistent with our obligations under section 504 of the Rehabilitation Act to provide reasonable accommodation to disabled people. To avoid any confusion, we did not include the example in the preamble to these final rules.

Comment: One organization commented that they felt that our criteria for considering conducting face-to-face conferences at locations other than SSA field offices (described in paragraph three of the ''Background'' section of the preamble), ''seems to circumscribe individual rights under section 504.'' They recommend that SSA either withdraw this statement or redraft it to be more consistent with section 504.

Response: We do not feel that the description of when a face-to-face personal conference will be conducted at a location other than an SSA field office circumscribes the claimant's rights in any way. In addition to conducting personal conferences face-to-face in the field office, the new rule offers beneficiaries two additional options for conducting personal conferences (by telephone and by video teleconferencing) and retains an option for face-to-face conferences at locations other than the field office on a case-by-case basis. We believe that this procedure is consistent with our obligation to provide reasonable accommodation under the Rehabilitation Act. However, to make our intent clear, we have added a sentence at the end of the paragraph explaining that the intent of this regulation is neither to circumscribe the individual's right to request reasonable accommodation nor to relieve SSA of its obligation to provide it in accordance with the law.

Comment: One organization suggested that the regulation be more specific about the different ways in which a personal conference can be conducted, such as by text telephone. Both organizations which commented recommended that specific language be included in the regulation about SSA's responsibility to provide reasonable accommodation.

Response: Our offices regularly conduct business via text telephone, relay services, and various other methods. These methods are all implied when we describe conducting a personal conference by telephone. As to the suggestion for including specific language in the regulation about SSA's responsibility to provide reasonable accommodation, we do not believe that this is necessary. Section 504 of the Rehabilitation Act already sets forth SSA's obligation to provide reasonable accommodation to disabled individuals. Our statement in paragraph three of the Background section of the preamble evidences our understanding of that obligation in the personal conference context.

Comment: One of the organizations was concerned that local SSA offices may attempt to coerce claimants into choosing an option for conducting the personal conference that is most convenient for their office. They suggest that SSA require the distribution of information about a disabled individual's right to request reasonable accommodation in the personal conference process, and to ensure that employees in the field offices understand the importance of providing disabled individuals with this information.

Response: The field office personnel deal with disabled claimants daily, and understand SSA's obligation to provide reasonable accommodation when requested. Also, as described in the regulation, it is the claimant who chooses the method for conducting the personal conference. We expect that they would select the option that best accommodates any limitations they may have.

Comment: One commenter suggested that adjustment to recover the overpayment after waiver of recovery is denied should be delayed, if the claimant appeals the decision, until after the appeals process has ended. They state that this is a more equitable way of collecting the overpayments, particularly for disabled individuals with low incomes.

Response: Beginning adjustment or recovery of an overpayment following denial of waiver of recovery does not constitute any change in existing policy. See § 404.506(g). As stated under the ''Explanation of Changes'' section of this preamble, part 416 did not have a reference to personal conferences when waiver of recovery of the overpayment cannot be approved. We simply added a new section that is similar to the regulations at § 404.506 to the title XVI regulations that codifies the policies on personal conferences that have long been in place. Courts have found that this process comports with due process and with the statute. With regard to the commenter's concerns about recoupment from low-income title XVI beneficiaries, our regulations provide a 10 percent limitation of recoupment rate for title XVI overpayments in most cases. Additionally, individuals are given the opportunity to request that the adjustment or recovery be made at a lower rate than the one proposed. If an individual requests a lower rate, a rate of withholding that is appropriate to the

financial condition of the overpaid individual will be set after evaluation of all the pertinent facts. See § 416.571.

Comment: One organization was concerned that these changes will make it more difficult for the claimant to receive and provide pertinent information, and for SSA personnel to make credibility determinations. They are also concerned that many claimants, particularly those who can least afford to repay an overpayment, will not have access to technology such as video teleconferencing equipment.

Response: As cited in the ''Background'' section of this preamble, SSA is already successfully conducting some hearings by telephone and by video teleconference, including administrative law judge review of denial of waiver based on a personal conference. As for a claimant's access to certain technological equipment, the method of conducting the personal conference is their choice and, as stated above, holding a face-to-face conference at a location other than the SSA field office will be considered on a case-by-case basis, if requested. Moreover, any individual who is interested in conducting the personal conference by video teleconference can contact us for additional information and assistance with this process.

Other Changes

In addition to the changes already discussed above, we have made minor, non-substantive changes for clarification purposes only.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were reviewed by OMB. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended.

Regulatory Flexibility Act

We certify that these final rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain information collection burdens in §§ 416.557(c)(3) and 416.557(d)(8) that require OMB clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, we have submitted a clearance request to OMB for approval of these sections. (As requested by OMB, we also included associated sections §§ 404.506(e)(3) and 404.506(f)(8), which deal with personal conferences but are not included in the text of the regulation). We will publish the OMB number and expiration date upon approval.

As required by the PRA, we published a notice of proposed rulemaking on March 5, 2007 at 72 FR 9709, in which we solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. No public comments were submitted relating to any of these issues.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 30, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart F of part 404 and subpart E of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart F—[Amended]

■ 1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3720A.

■ 2. Section 404.506 is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 404.506 When waiver may be applied and how to process the request.

* * * * *

(c) * * * We will offer to the individual the option of conducting the personal conference face-to-face at a place we designate, by telephone, or by video teleconference. The notice will advise the individual of the date and time of the personal conference.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 2. Section 416.557 is added to read as follows:

§ 416.557 Personal conference.

(a) If waiver cannot be approved (i.e., the requirements in § 416.550 (a) and (b) are not met), the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled date, time and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference. We will offer to the individual the option of conducting the personal conference face-to-face at a place we designate, by telephone, or by video teleconference. The notice will advise the individual of the date and time of the personal conference.

(b) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another of our representatives who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(c) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 416.1500), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.

(d) At the personal conference, the decisionmaker:

(1) Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;

(2) Ascertains the role and identity of everyone present;

(3) Indicates whether or not the individual reviewed the claims file;

(4) Explains the provisions of law and regulations applicable to the issue;

(5) Briefly summarizes the evidence already in file which will be considered;

(6) Ascertains from the individual whether the information presented is correct and whether he/she fully understands it;

(7) Allows the individual and the individual's representative, if any, to present the individual's case;

(8) Secures updated financial information and verification, if necessary;

(9) Allows each witness to present information and allows the individual and the individual's representative to question each witness;

(10) Ascertains whether there is any further evidence to be presented;

(11) Reminds the individual of any evidence promised by the individual which has not been presented;

(12) Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;

(13) Explains that a decision will be made and the individual will be notified in writing; and

(14) Explains repayment options and further appeal rights in the event the decision is adverse to the individual.

(e) SSA issues a written decision to the individual (and his or her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

(f) If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is the next step in the appeals process.

[FR Doc. E8–314 Filed 1–10–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4712–C–04]

RIN 2502–AH72

Good Neighbor Next Door Sales Program; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Technical correction.

SUMMARY: This document makes a correction to HUD's November 1, 2006, final rule establishing regulations for the Good Neighbor Next Door (GNND) Sales Program. It has come to HUD's attention that the regulatory text of the November 1, 2006, final rule contained a typographical error regarding properties available for sale under the GNND Sales Program. The purpose of this document is to make the necessary correction.

DATES: *Effective Date:* January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Asset Management and Disposition Division, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2006 (71 FR 64422), HUD published a final rule establishing regulations for the Good Neighbor Next Door (GNND) Sales Program. The GNND Sales Program seeks to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians, whose daily responsibilities and duties reflect a high level of public service commitment and represent a nexus to the needs of the community, to purchase and live in homes in these communities. The November 1, 2006, final rule, codified the GNND Sales Program regulations at 24 CFR part 291, subpart F.

II. Need for Correction

It has come to HUD's attention that the regulatory text of the November 1, 2006, final rule contained a typographical error regarding properties available for sale under the GNND Sales Program. The preamble to the final rule correctly makes clear that occupied properties, properties located in Asset Control Areas, and properties that HUD determines will be sold through an alternative sales method will not be made available for purchase under the GNND Sales Program (*see* 61 FR 64422, third column). However, due to typographical error regarding the closing of a parenthetical, § 291.510(b) of the regulatory text (entitled ''Eligible properties'') incorrectly provides that:

> Under the GNND Sales Program, single-unit properties acquired by HUD located in HUD-designated revitalization areas (except occupied properties), those located in Asset Control Areas, or those that HUD has determined will be sold through an alternative sales method will be made available to interested law enforcement officers, teachers, and firefighters/emergency medical technicians prior to listing the properties for sale to other purchasers.

Rather than ending after the phrase ''occupied properties,'' the parenthetical should close at the end of the list of excluded properties after the phrase ''those that HUD has determined will be sold through an alternative sales method.'' The purpose of this document is to make the necessary correction to § 291.510(b).

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

■ Accordingly, 24 CFR part 291 is corrected by making the following correcting amendment:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

■ 1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

■ 2. Revise § 291.510(b) to read as follows:

§ 291.510 Overview of the GNND Sales Program.

* * * * *

(b) *Eligible properties.* Under the GNND Sales Program, single-unit properties acquired by HUD located in HUD-designated revitalization areas (except occupied properties, those located in Asset Control Areas, or those that HUD has determined will be sold through an alternative sales method) will be made available to interested law enforcement officers, teachers, and firefighters/emergency medical technicians prior to listing the properties for sale to other purchasers.

* * * * *

Dated: January 3, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–355 Filed 1–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA88

Financial Crimes Enforcement Network; Amendment Regarding Financial Institutions Exempt from Establishing Anti-Money Laundering Programs

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is amending the provision in its regulations that defers, for certain categories of financial institutions, the application of the anti-money laundering program requirements in section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001. Two of the categories of financial institutions specifically exempted from having to establish an anti-money laundering program subsequently have been required by regulation to establish such programs, and this rulemaking will amend the regulations to reflect those changes.

DATES: *Effective Date:* January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division (FinCEN), (800) 949–2732 (toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

A. USA PATRIOT Act Section 352

On October 26, 2001, the President signed into law the USA PATRIOT Act (Pub. L. 107–56). Title III of the USA PATRIOT Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (''BSA''), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. Section 352(a) of the USA PATRIOT Act, amended section 5318(h) of the BSA, effective April 24, 2002, to require every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs.

The definition of ''financial institution'' in sections 5312(a)(2) and (c)(1) of the BSA is broad. It includes categories of institutions that were already subject to some federal anti-money laundering regulations at the time the USA PATRIOT Act was passed, such as banks, savings associations, credit unions, and money services businesses (such as money transmitters and currency dealers or exchangers). The definition also includes: Registered securities broker-dealers; futures commission merchants; dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; trust companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and commodity trading advisors that are registered or require to register under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Section 352 of the USA PATRIOT Act requires *all* of these businesses to establish anti-money laundering programs.

Section 5318(h)(2) of the BSA, however, also grants the Secretary of the Treasury, and by extension his delegate FinCEN, the authority to exempt certain financial institutions from the requirement to institute anti-money laundering programs. In April 2002, FinCEN issued a series of interim final rules implementing section 352 of the USA PATRIOT Act.[1] At the same time, FinCEN also exempted certain financial institutions, including dealers in precious metals, stones, or jewels, and insurance companies, from having to comply with section 352 of the USA PATRIOT Act for a six month period.[2] In November 2002, FinCEN replaced this six month exemption from the application of the anti-money laundering program requirements in section 352 with an open-ended exemption (''Temporary Exemption Rule'').[3]

B. Updating 31 CFR Section 103.170

In the years since the Temporary Exemption Rule was published, FinCEN has promulgated a number of rules that require two previously exempted categories of financial institutions (dealers in precious metals, stones, or jewels,[4] and insurance companies [5]) to establish anti-money laundering programs.[6] Although FinCEN has, through the publication of the above-mentioned rules, *ipso jure* revoked the exemptions previously issued to those categories of financial institutions,[7] the Temporary Exemption Rule is being amended to reflect these revocations and eliminate possible confusion.

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[1] These rules prescribed requirements for anti-money laundering programs for banks, savings associations, credit union, registered securities broker-dealers, futures commission merchants, and introducing brokers that are regulated by a federal functional regulator or a self-regulatory organization, and casinos. 67 FR 21110 (Apr. 29, 2002) (interim final rules). At the same time, FinCEN also issued interim final rules that required money services businesses (67 FR 21114 (Apr. 29, 2002)), mutual funds (67 FR 21117 (Apr. 29, 2002)), and operators of credit card systems (67 FR 21121 (Apr. 29, 2002)) to establish anti-money laundering programs.

[2] *Id.*

[3] 31 CFR 103.170, 67 FR 67547 (Nov. 6, 2002), corrected at 67 FR 68953 (Nov. 14, 2002).

[4] 31 CFR 103.170(b)(i)

[5] 31 CFR 103.170(b)(ix). Only those insurance companies falling within the definition contained in 31 CFR 103.137(a)(9) are required to have an anti-money laundering program. The removal of the entire category of ''insurance companies'' from the exempted list should not be read to limit the breadth of the definition for purposes of the availability of the safe harbor under 31 U.S.C. 5318(g)(3) for voluntary reports of suspicious activities. See 70 FR 66755 (Nov. 3, 2005), fn 4.

[6] FinCEN issued rules in 2005 requiring dealers in precious stones, metals, and jewels ((See 70 FR 33702 (June 9, 2005) (interim final rule)), and certain insurance companies (See 70 FR 66754 (Nov. 3, 2005) (final rule)) to establish anti-money laundering programs.

[7] The removal of the temporary exemption occurs automatically pursuant to 31 CFR section 103.170(c), which states that ''[t]he exemptions described in paragraphs (a)(2) and (b) of [this rule] shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this subpart I.''

II. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), notice of a proposed rulemaking is not required when the agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[8] FinCEN is making technical amendments to the Temporary Exemption Rule to ensure that the list of temporarily exempted financial institutions is accurate and not confusing. FinCEN, therefore, finds that publishing the amendments for comment is unnecessary.

In addition, publication of a substantive rule not less than 30 days before its effective date is required by the APA except as otherwise provided by the agency for good cause.[9] For the same reasons described above with respect to notice and opportunity for comment, FinCEN finds that there is good cause for making these technical amendments effective on January 11, 2008.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.[10]

IV. Executive Order 12866

This final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth above, FinCEN is amending 31 CFR part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 553(d).

[10] See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking).

Subpart I—Anti-Money Laundering Programs

§ 103.170 [Amended]

■ 2. Section 103.170 is amended by:

■ a. Removing paragraphs (b)(1)(i) and (b)(1)(ix); and

■ b. Redesignating paragraphs (b)(1)(ii) as (b)(1)(i); (b)(1)(iii) as (b)(1)(ii); (b)(1)(iv) as (b)(1)(iii); (b)(1)(v) as (b)(1)(iv); (b)(1)(vi) as (b)(1)(v); (b)(1)(vii) as (b)(1)(vi); (b)(1)(viii) as (b)(1)(vii); (b)(1)(x) as (b)(1)(viii); (b)(1)(xi) as (b)(1)(ix); and (b)(1)(xii) as (b)(1)(x).

Dated: December 20, 2007.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–315 Filed 1–10–08; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0546; FRL–8347–7]

Thiabendazole; Threshold of Regulation Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes by rule that there is no need for a tolerance or tolerance exemption under the Federal Food Drug and Cosmetic Act (FFDCA) for the use of the fungicide thiabendazole as a seed treatment on dry peas. This determination is based on EPA's finding that any residues that remain in food from this use will be both non-detectable and below the level of regulatory concern.

DATES: This regulation is effective January 11, 2008. Objections and requests for hearings must be received on or before March 11, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0546. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of

this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0546 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 11, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0546, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of October 3, 2007 (72 FR 56325) (FRL–8151–6), EPA issued a proposed rule pursuant to sections 408(e) and 701(a) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The proposed rule explained the Agency's determination that the use of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] as a seed treatment on dry peas does not need an FFDCA tolerance or tolerance exemption based on EPA's finding that any residues that remain in food from this use will be both non-detectable and below the level of regulatory concern. The proposed rule included a discussion of the Agency's threshold of regulation (TOR) policy and identified the information (including toxicity data, residue data and the analytical method) that EPA relied on in making this TOR determination; it also established a 60–day public comment period. There were no comments received in response to the proposed rule.

III. Action on the Proposed Regulation

Based upon the rationale and findings set forth in the proposed rule, the use of thiabendazole as a seed treatment on dry peas (including field pea, pigeon pea, chickpea or lentil) is designated as below the threshold of regulatory concern and thus as not requiring a tolerance or a tolerance exemption under FFDCA. The use is identified as such under 40 CFR 180.2010 (Threshold of regulation determinations).

Designation of this use as below the level of regulatory concern does not legalize any detectable residues of thiabendazole on food. It does mean that, despite labeling for this use on a food or feed crop, it may be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, without obtaining a tolerance or exemption from the requirement of a tolerance as otherwise required by 40 CFR 152.112(g). The text of the regulation has been clarified on this point.

Adequate analytical methodology (High Pressure Liquid Chromatography/Fluorescence Detector (HPLC/FLD) method) is available to detect residues of thiabendazole in/on dry peas. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993, as amended by Executive Order 13422, 72 FR 2763, January 18, 2007). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355), May 22, 2001 or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks or Safety Risks* (62 FR 19885, April 23, 1997). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency, for the reasons explained in the proposed rule, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities because this rule does not have any adverse economic impacts.

This rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000) do not apply to this rule. In addition, this rule does not impose an enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded

Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 31, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.2010 is amended by adding text to read as follows:

§ 180.2010 Threshold of regulation determinations.

The following pesticide chemical uses on food or feed, or food or feed crops, do not need a tolerance or exemption from the requirement of a tolerance, and may be registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, without obtaining such tolerance or exemption, based on EPA's determination that the uses are below the threshold of regulation.

Pesticide Chemical	CAS Reg. No.	Use/Limits	Analytical Method
Thiabendazole	148–79–8	As a seed treatment for dry pea (including field pea, pigeon pea, chickpea or lentil), using a maximum application rate of 0.075 pounds of active ingredient per 100 pounds of seed. Vines or hay grown from treated seed may not be fed to livestock..	High Performance Liquid Chromatography/Florescence Detector method[1]; Modification of *Ion-Pairing Liquid Chromatographic Determination of Benzimidazole Fungicides in Foods*, Gilvydis and Walters, JAOAC, vol. 73, no. 5, 1990.

[1]Available from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*

[FR Doc. E8–267 Filed 1–10–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516, 1533, and 1552

[Docket ID No. EPA–HQ–OARM–2003–0001; FRL–8515–8]

RIN 2030–AA89

Acquisition Regulation: Guidance on Use of Award Term Incentives; Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to add policy, procedures, and contract clauses for the use of award term incentives. This rule makes two administrative changes to the EPAAR. One change is to reflect the Civilian Board of Contract Appeals as EPA's new forum for appeals under the Contract Disputes Act of 1978. The other change corrects a numbering error in Subpart 1516.4.

DATES: This final rule is effective on February 11, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2003–0001. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Docket Center, OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Chambers, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4398; fax number: (202) 565–2474; e-mail address: *chambers.marilyn@epa.gov.*

I. Supplementary Information

A. Background

EPA published a proposed rule in the **Federal Register** at 72 FR 56708, October 4, 2007 to add guidance to the EPAAR on the use of award term contracts and make two administrative changes. The comment period closed on December 3, 2007. One comment was received. The respondent pointed out, effective January 6, 2007, the Board of Contract Appeals that existed at the General Services Administration was terminated and the cases were transferred to the Civilian Board of Contract Appeals. Our proposed rule stated EPA has changed its forum for appeals under the Contract Disputes Act of 1978 from the Department of Interior Board of Contract Appeals to the General Services Administration Board of Contract Appeals. The rule should have stated EPA has changed its forum for appeals under the Contract Disputes Act of 1978 from the Department of Interior Board of Contract Appeals to the Civilian Board of Contract Appeals. The final rule is revised to substitute the Civilian Board of Contract Appeals for the General Services Administration Board of Contract Appeals in section

1533.203. No other changes were made to the proposed rule.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

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

For purposes of assessing the impact of today's rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since award term incentives will be available equally to large and small entities, this rule will not have a significant economic impact on 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 their regulatory actions on State, local, and Tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

F. 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'' are 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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 rule amends the EPAAR to provide guidance on the use of award term incentives and make other administrative changes. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This rule does not have tribal implications. It does not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law, or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule does 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 rule does not involve human health or environmental effects.

K. Submission to Congress and the Government Accountability Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 11, 2008.

List of Subjects in 48 CFR Parts 1516, 1533 and 1552

Government procurement.

Dated: December 26, 2007.

John C. Gherardini,

Acting Director, Office of Acquisition Management.

■ Therefore, 48 CFR Chapter 15 is amended as set forth below:

PART 1516—TYPES OF CONTRACTS

■ 1. The authority citation for part 1516 continues to read as follows:

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Add section 1516.401–1 to read as follows:

1516.401–1 General.

■ 3. Add section 1516.401–170 to read as follows:

1516.401–70 Award term incentives.

(a) Award term incentives enable a contractor to become eligible for additional periods of performance under a current contract by achieving prescribed performance measures under that contract.

(b) Award term incentives are designed to motivate contractors to superior performance. Accordingly, the prescribed performance measures, i.e., acceptable quality levels (AQL) which must be achieved by a contractor to become eligible for an award term typically will be in excess of the AQLs necessary for Government acceptance of contract deliverables.

(c) The Award Term Incentive Plan sets forth the evaluation process, including the evaluation criteria and performance measures, and serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government.

(d) Award term incentives may be used in conjunction with options. The Federal Acquisition Regulation does not prescribe a level of performance for the exercise of options, as contrasted with award term incentives, which should require superior performance as discussed in paragraph (b) of this subsection. Award term incentive periods will follow any option periods.

(e)(1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period; or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(f) Award term incentives may be appropriate for any type of service contract.

■ 4. Add section 1516.401–270 to read as follows:

1516.401–270 Definition.

Acceptable quality level (AQL) as used in this subpart means the minimum percent of deliverables which are compliant with a given performance standard that would permit a contractor to become eligible for an award term incentive. Because the performance necessary for eligibility for the award term incentive may be in excess of that

necessary for the Government acceptance of contract deliverables, the AQLs associated with the award term incentive may exceed the AQLs associated with the acceptance of contract deliverables. For example, under contract X, acceptable performance is 75 percent of reports submitted to the Government within five days. However, to be eligible for an award term incentive, 85 percent of reports must be submitted to the Government within five days.

1516.405 [Redesignated as 1516.406]

■ 5. Redesignate section 1516.405 as section 1516.406.

1516.404–2 [Redesignated as 1516.405–2]

■ 6. Redesignate section 1516.404–2 as section 1516.405–2.

1516.404–272 [Redesignated as 1516.405–270]

■ 7. Redesignate section 1516.404–272 as section 1516.405–270.

1516.404–273 [Redesignated as 1516.405–271]

■ 8. Redesignate section 1516.404–273 as section 1516.405–271.

1516.404–274 [Redesignated as 1516.405–272]

■ 9. Redesignate section 1516.404–274 as section 1516.405–272.

■ 10. Amend newly designated section 1516.406 to add new paragraphs (c) and (d) to read as follows:

1516.406 Contract clauses.

* * * * *

(c) The Contracting Officer shall insert the clauses at 1552.216-77, Award Term Incentive, 1552.216–78, Award Term Incentive Plan, and 1552.216–79 Award Term Availability of Funds in solicitations and contracts when award term incentives are contemplated. The clauses at 1552.216–77 and 1552.216–78 may be used on substantially the same basis.

(d) If the Contracting Officer wishes to use the ratings set forth in the National Institutes of Health (NIH) Contractor Performance System (CPS) on the contract at hand as the basis for contractor eligibility for an award term incentive, the Contracting Officer shall insert the clause at 1552.216–78 with its Alternate I.

PART 1533—PROTESTS, DISPUTES AND APPEALS

■ 11. The authority citation for part 1533 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 12. Revise section 1533.203 to read as follows:

1533.203 Applicability.

The Civilian Board of Contract Appeals (CBCA) will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contracts Disputes Act. The rules and regulations of the CBCA appear in 48 CFR Chapter 61.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 14. Add section 1552.216–77 to read as follows:

1552.216–77 Award term incentive.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

Award Term Incentive (FEB 2008)

(a) General. This contract may be extended as set forth in paragraph (b) based on overall contractor performance as evaluated in accordance with the Clause entitled ''Award Term Incentive Plan,'' provided the Agency has a need for the effort at or before the time an award term is to commence, and if the contractor receives notice of the availability of funding for an award term period pursuant to the ''Award Term Availability of Funds'' clause. The Contracting Officer is responsible for the overall award term evaluation and award term decision. The Contracting Officer will unilaterally decide whether or not the contractor is eligible for an award term extension, and in conjunction with the Contracting Officer's Representative, will determine the need for continued performance and funding availability.

(b) Period of performance. Provided the contractor has achieved the performance measures, e.g., acceptable quality levels, set forth in the clause ''Award Term Incentive Plan,'' the Contracting Officer may extend the contract by exercising _____ [insert the total award term incentive periods] additional award term incentive period(s) of _____ [insert the award term incentive period] months each. The total maximum period of performance under this contract, if the Government exercises any option periods and all award term incentive periods is _____ [insert the total of the base period, option periods (if any), and award term incentive periods] years.

(c) Right not to grant or cancel the award term incentive. (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period; or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term incentive periods; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(d) Cancellation of an award term incentive period that has not yet commenced for any of the reasons set forth in paragraph (c) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term incentive is cancelled, a unilateral modification will cite this clause as the authority.

(e) Award term incentive administration. The award term incentive evaluation(s) will be completed in accordance with the schedule in the Award Term Incentive Plan. The contractor will be notified of the results and their eligibility to be considered for the respective award term incentive no later than 120 days after an evaluation period.

(f) Review process. The contractor may request a review of an award term incentive evaluation which has resulted in the contractor being ineligible for the award term incentive. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(end of clause)

■ 15. Add section 1552.216–78 to read as follows:

1552.216–78 Award Term Incentive Plan.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

Award Term Incentive Plan (FEB 2008)

(a) The Award Term Incentive Plan provides for the evaluation of performance, and, together with Agency need and availability of funding, serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government. Any changes to the Award Term Incentive Plan will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the contractor prior to the issuance of a revised Award Term Incentive Plan, but is not required to obtain the contractor's consent to the revisions.

(b) [describe the evaluation periods and associated award term incentive periods, e.g., months 1–18 for award term incentive period

I, and months 19–36 for award term incentive period II]

(c) [describe the evaluation schedule, e.g., 90 days after the end of the evaluation period]

(d) In order to be eligible for an award term incentive period the contractor must achieve all of the acceptable quality levels (AQL) for the evaluated tasks, both individual and aggregate, for that evaluation period. Failure to achieve any AQL renders the contractor ineligible for the associated award term incentive period. [identify the most significant tasks. Describe the AQL for each task as well as an overall AQL for the associated evaluation periods, e.g., an AQL of 90% each for tasks 1 and 3, and an AQL of 85% for task 7, and an overall AQL of 90% for the months 1–18 evaluation period]

(e) [If the contract will contain a quality assurance surveillance plan (QASP), reference the QASP, e.g., attachment 2. Typically, the performance standards and AQLs will be defined in the QASP]

(end of clause)

Alternate 1 (FEB 2008)

As prescribed in 1516.406(d), substitute paragraphs substantially the same as following paragraphs (b) through (e) for paragraphs (b) through (e) in the basic clause:

(b) At the conclusion of each contract year, an average contract rating shall be determined by using the numerical ratings entered into the National Institutes of Health (NIH) Contractor Performance System (CPS) for this contract. The NIHCPS is an interactive database located on the Internet which EPA uses to record contractor performance evaluations.

(c) The contract year average rating shall be obtained by dividing the combined ratings by the number of ratings, for example:

Criteria	Rating
Quality of Product or Service.	5.
Cost Control	4.
Timeliness of Performance.	4.
Business Relations ...	5.
	18 (combined rating).
	/ 4 (number of ratings).
	= 4.5 contract year average rating.

(d) The contractor shall be evaluated for performance from the start of the contract through Year ____ [identify the evaluation period, e.g., year three]. The average rating for each contract year (as derived in paragraph (c) above) will be combined and divided by [insert the number of evaluation periods] to obtain an overall average rating, for example:

Evaluation period	Average rating
Year One	4.5.
Year Two	4.75.
Year Three	4.75.
	14 (combined average rating).
	/ 3 (number of evaluation periods).
	= 4.66 overall average rating.

(e) Based on the overall average rating as determined under paragraph (d), provided that no individual rating, i.e., Quality of Product or Service, Cost Control, Timeliness of Performance, or Business Relations is below a 3, the contractor shall be eligible for the following award term periods:

(1) Overall average rating of 4.6 to 5.0—Two award term incentive periods of ____ [insert the number of months] months.

(2) Overall average rating of 4.0 to 4.6—One award term incentive period of ____ [insert the number of months] months.

■ 16. Add section 1552.216–79 to read as follows:

1552.216–79 Award Term Availability of Funds.

As prescribed in 1515.406(c), insert the following clause:

Award Term Availability of Funds (FEB 2008)

Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(end of clause)

[FR Doc. E8–356 Filed 1–10–08; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 73, No. 8
Friday, January 11, 2008

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, 630, 640, 660, 820, and 1270

[Docket No. 2006N–0221]

Requirements for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 4, 2008, the comment period for the proposed rule that appeared in the **Federal Register** of November 8, 2007 (72 FR 63416). In the proposed rule, FDA had requested comments by February 6, 2008. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by August 4, 2008.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0221, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend,Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration,1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 8, 2007 (72 FR 63416), FDA published a proposed rule with a 90-day comment period to request comments on the proposed rule. The proposed rule would establish regulations for blood and blood components, including Source Plasma and Source Leukocytes, to add donor requirements that are consistent with current practices in the blood industry, and to more closely align the regulations with current FDA recommendations.

The agency has received requests for a 180-day extension of the comment period for the proposed rule. Each request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule.

FDA has considered the requests and is extending the comment period for the proposed rule for 180 days, until August 4, 2008. The agency believes that a 180-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on 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.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: January 2, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–297 Filed 1–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[Docket ID: OSM–2007–0021; SATS No. NM–047–FOR]

New Mexico Regulatory Program

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

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

SUMMARY: We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico is proposing additions of and revisions to the New Mexico Annotated Code (NMAC) to improve and clarify the public notification process during permitting actions, to correct outdated citations, to comply with formatting requirements for New Mexico administrative law; the revisions also include non-substantive editorial changes. New Mexico revised its program to provide additional safeguards, clarify ambiguities, and achieve stylistic consistency.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain standard time February 11, 2008. If requested, we will hold a public hearing on the amendment on February 5, 2008. We will accept requests to speak until 4 p.m., mountain standard time on January 28, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Mail/Hand Delivery/Courier:* Bob Postle, Branch Chief, Field Operations, Program Support Division, Western Region, Office of Surface Mining, Reclamation, and Enforcement, 505 Marquette Ave. NM Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5070, Internet address: *bpostle@osmre.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule is listed under the agency name ''OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT.'' The proposed rule has been assigned Docket ID: OSM–2007–0021.

If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2007–0021 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket for NM–047–FOR. If you click on OSM–2007–0021, you can view the proposed rule, add comments, and view any comments submitted by other persons.

Docket: You may access the docket for this rulemaking at *www.regulations.gov.* Search for Docket ID: OSM–2007–0021. At *www.regulations.gov*, you may review and print a copy of the New Mexico program amendment, a listing of any scheduled public hearings, and all written comments received in response to this document. The information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Area Office.

Bob Postle, Branch Chief, Field Operations, Program Support Division, Western Region, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Ave. NM Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5070.

Bill Brancard, Director, Mining and Minerals Division, New Mexico Energy, Minerals, and Natural Resources Department, 1220 South St. Francis Drive, Sante Fe, New Mexico 87505, Telephone: (505) 476–3400.

FOR FURTHER INFORMATION CONTACT: Bob Postle, Telephone: (505) 248–5070, Internet address: *bpostle@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (a)(7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Description of the Proposed Amendment

By letter dated November 28, 2007, New Mexico sent us a proposed amendment to its program (SATS No. NM–047–FOR) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico proposed this amendment at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

New Mexico proposes revisions to the New Mexico Annotated Code (NMAC) 19.8. New Mexico proposed the revisions to improve and clarify the public notification process during permitting actions, correct outdated citations, and comply with formatting requirements for New Mexico administrative law; these revisions include many non-substantive editorial changes which are not described below.

Specifically, New Mexico proposes the following substantive revisions:

NMAC 19.8.7.701.F requires the permit application to include the owner of record and residents of dwellings and structures within one-half mile of any part of the proposed permit area (the previous requirement was limited to properties contiguous to any part of the proposed permit area).

NMAC 19.8.8.812.D requires, consistent with the above proposed rule, that all dwellings and structures within one-half mile of the proposed permit area are included on the permit application maps (the previous rule required that only dwellings and structures within 1000 feet be included on the maps).

NMAC 19.8.11.1100.B(1) requires that notice of a permit application or permit revision be provided by at least three of the following methods: mailing a notice to the owners of record within one-half mile of the proposed permit area, posting a notice in four publicly accessible places, publishing a notice in a newspaper, and radio broadcasted public service announcements. If there is a significant non-English speaking population living within the area, a method to reach these people must be used.

NMAC 19.8.11.1100.D(5) requires that written notifications shall be mailed to persons on a list maintained by the Director.

NMAC 19.8.11.1100.E(3) requires that written notifications be posted on a Web site after an application is received.

NMAC 19.8.11.1100.F require that the Director shall hold a public meeting

within 60 days of receipt of a completed application for a new permit or a permit revision.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at one of the two addresses given above (see **ADDRESSES**). Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain standard time, on January 28, 2008. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on Federal regulations for which an analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 7, 2007.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. E8–359 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 071128765–7769–01]

RIN 0648–AW32

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Black Abalone

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a review of the status of black abalone (*Haliotis cracherodii*) under the Endangered Species Act (ESA). After reviewing the best scientific and commercial information available, evaluating threats facing the species, and considering efforts being made to protect black abalone, we have concluded that the species is in danger of extinction throughout all of its range and are proposing to list the species as endangered under the ESA. This proposal is based on information indicating that: the disease known as withering syndrome has spread to areas throughout the range of the species, has been responsible for the local extirpation of populations throughout a large part of the species' range, and threatens remaining black abalone populations; low adult densities below the critical threshold density required for successful fertilization exist throughout a large part of the species' range; and, a number of interacting factors (e.g., suboptimal water temperatures, reduced genetic diversity, and illegal harvest) may further hamper natural recovery of the species. A critical habitat designation is being considered and may be proposed in a subsequent **Federal Register** notice. If the proposed listing is finalized, a recovery plan will be prepared and implemented.

DATES: Comments on this proposal must be received by April 10, 2008. Public hearing (s) will be held promptly if any person so requests by February 25, 2008. Notice of the location (s) and time(s) of any such hearing(s) will be published in the **Federal Register** not less than 15 days before the hearing(s) is(are) held.

ADDRESSES: You may submit comments, identified by [RIN 0648–AW32], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Facsimile (fax): 562–980–4027, Attn: Melissa Neuman.
- Mail: Submit written comments to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

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.

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

A draft black abalone status review report and other reference materials regarding this determination can be obtained via the Internet at: http://www.nmfs.noaa.gov. The draft status review report and list of references are also available by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115; or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Black abalone was added to the National Marine Fisheries Service's (NMFS') Candidate Species list on June 23, 1999 (64 FR 33466) and remained on this list after NMFS redefined the term ''candidate species'' on April 15, 2004 (69 FR 19975). We initiated an informal ESA status review of black abalone on July 15, 2003, and formally announced initiation of a status review on October 17, 2006 (71 FR 61021), at the same time soliciting information from the public. On December 27, 2006, we received a petition from the Center for Biological Diversity (CBD) to list black abalone as either an endangered or threatened species under the ESA and to designate critical habitat for the species concurrently with any listing determination. We published a 90–day

finding on April 13, 2007 (72 FR 18616), stating that the CBD petition presented substantial scientific and commercial information indicating that the petitioned actions may be warranted.

In June 2007, we assembled a Status Review Team (SRT) to review the available information, assess the extinction risk and threats facing the species, and produce an ESA status review report for black abalone. The draft status review report (VanBlaricom *et al.*, 2007) (hereafter ''status report'') provides a thorough account of black abalone biology and natural history, and assesses demographic risks, threats and limiting factors, and overall extinction risk. The key background information and findings of the draft status report are summarized below.

Taxonomy and Species Description

Abalone, members of the gastropod genus Haliotis, are marine gastropods that occur throughout most of the world (Cox, 1962). There are approximately 60 species (Geiger, 1999) found in temperate to tropical waters from the intertidal zone (i.e., the area of the foreshore and seabed that is exposed to the air at low tide and submerged at high tide) to depths of over 50 m. All are benthic, occurring on hard substrate, relatively sedentary, and generally herbivorous, feeding on attached or drifting algal material. There are seven species of abalone native to the west coast of North America (Geiger, 1999).

The taxonomic classification of black abalone is as follows: Phylum Mollusca, Class Gastropoda, Subclass Prosobranchia, Order Archaeogastropoda, Superfamily Pluerotomariacea, Family Haliotidae, Genus *Haliotis*, Species *cracherodii*. Leach (1814) gave the first formal description of this shallow-living abalone (upper intertidal zone to subtidal depths of 6 m), describing the shell as smooth, circular, and black to slate blue in color. There are five to nine open respiratory pores that are flush with the shell's surface. Typically, the shell's interior is white (Haaker *et al.*, 1986), with a poorly defined or no muscle scar (Howorth, 1978). Adults attain a maximum shell length of approximately 20 cm (throughout this document we use the maximum diameter of the elliptical shell as the index for individual body size). The muscular foot of the black abalone allows the animal to clamp tightly to rocky surfaces without being dislodged by wave action. Locomotion is accomplished by an undulating motion of the foot. A column of shell muscle attaches the body to the shell. The mantle and black epipodium, a sensory structure and extension of the foot which bears lobed tentacles of the same color (Cox, 1960), circle the foot and extend beyond the shell of a healthy black abalone. The internal organs are arranged around the foot and under the shell.

Historical and Current Distribution

There is some debate regarding the northern extent of the historic range of black abalone. Many have cited the historic range as extending from Coos Bay, Oregon, USA to Cabo San Lucas, Southern Baja California, Mexico (Geiger, 2000). However, the northernmost documented record of black abalone (based on museum specimens) is from Crescent City (Del Norte County, California, USA; Geiger, 2004). Most experts agree that the current range of black abalone extends from Point Arena (Mendocino County, California, USA) south to Northern Baja California, Mexico. Black abalone may exist, but are considered extremely rare, north of San Francisco (Morris *et al.*, 1980) to Crescent City, California, USA and south of Punta Eugenia to Cabo San Lucas, Baja California, Mexico (P. Raimondi, pers. comm.). Within this broad geographic range, black abalone generally inhabit coastal and offshore island intertidal habitats on exposed rocky shores where bedrock provides deep, protective crevice shelter (Leighton, 2005).

Population Structure

Recent studies have evaluated population structure in black abalone (Hamm and Burton, 2000; Chambers *et al.*, 2006; Gruenthal, 2007) using various methods. These studies indicate: (1) minimal gene flow among populations; (2) black abalone populations are composed predominantly of closely related individuals produced by local spawning events; (3) gene flow among island populations is relatively greater than between island and mainland populations; and (4) the overall connectivity among black abalone populations is low and likely reflects limited larval dispersal, and a low degree of exchange among populations.

Habitat

Black abalone occur over a broad latitudinal range, though the range appears to have narrowed somewhat from historic times. This broad range, in addition to their small-scale distribution (high intertidal to 6 m depth), is associated with an evolved capability to withstand extreme variation in environmental conditions such as temperature, salinity, moisture, and wave action.

Black abalone occur on a variety of rock types, including igneous, metamorphic, and sedimentary rocks at a number of locations. Complex surfaces with cracks and crevices in upper and middle intertidal zones may be crucial recruitment habitat and appear to be important for adult survival as well (Leighton, 1959; Leighton and Boolootian, 1963; Douros, 1985, 1987; Miller and Lawrenz-Miller, 1993; VanBlaricom *et al.*, 1993; Haaker *et al.*, 1995). Complex configurations of rock surfaces likely afford protection from predators, direct impacts of breaking waves, wave-born projectiles, and excessive solar heating during daytime low tides.

Movement

Planktonic larval abalone movement is almost certainly determined primarily by patterns of water movement in nearshore habitats near spawning sites. Individual larvae may be able to influence movement to some degree by adjusting vertical position in the water column, but to our knowledge the ability of black abalone larvae to move in this way has not been documented. Movement behavior of post-metamorphic juvenile black abalone is likewise unknown. Leighton (1959) and Leighton and Boolootian (1963) indicate that black abalone larvae may settle and metamorphose in the upper intertidal zone, using crevices and depressions (including those formed by abrasive action of other intertidal mollusks) as habitat. Leighton and Boolootian (1963) suggest that young black abalone move lower in the intertidal zone as they begin to grow, occupying the undersides of large boulders. To our knowledge there is no published information on direct observations of movement behavior of small (<20 mm) juvenile black abalone in the field. Qualitative (Leighton, 2005; VanBlaricom, unpublished observations) and quantitative (Bergen, 1971; Blecha *et al.*, 1992; VanBlaricom and Ashworth, in preparation; Richards, unpublished observations) studies of movement in black abalone suggest that smaller abalone (<65 mm) move more frequently than larger abalone, movement is more frequent during night hours compared to daylight hours, and that larger abalone may remain in the same location for many years.

Diet

Larvae are lecithotrophic (i.e., receive nourishment via an egg yolk) and apparently do not feed while in the plankton. From the time of post-larval metamorphosis to a size of about 20 mm, black abalone are highly cryptic,

occurring primarily on the undersides of large boulders or in deep narrow crevices in solid rocky substrata. In such locations the primary food sources are thought to be microbial and possibly diatom films (Leighton, 1959; Leighton and Boolootian, 1963; Bergen, 1971). At roughly 20 mm black abalone move to more open locations, albeit still relatively cryptic, gaining access to both attached macrophytes and to pieces of drift plants cast into the intertidal zone by waves and currents. As black abalone continue to grow, the most commonly observed feeding method is entrapment of drift plant fragments. Webber and Giese (1969), Bergen (1971), Hines and Pearse (1982), and Douros (1987) have confirmed the importance of large kelps in the diet of juvenile and adult black abalone. The primary food species are said to be *Macrocystis pyrifera* and *Egregia menziesii* in southern California (i.e., south of Pt. Conception) habitats, and *Nereocystis leutkeana* in central and northern California habitats.

Reproduction

Black abalone have separate sexes and are ''broadcast'' spawners. Gametes from both parents are shed into the sea, and fertilization is entirely external. Resulting larvae are minute and defenseless, receive no parental care or protection of any kind, and are subject to a broad array of physical and biological sources of mortality. Species with a broadcast-spawning reproductive strategy are subject to strong selection for maximum fecundity of both sexes. Only through production of large numbers of gametes can broadcast spawners overcome high mortality of gametes and larvae and survive across generations. It is not uncommon for broadcast-spawning marine species, a group including many taxa of fish and invertebrates, to produce millions of eggs or sperm per individual per year. Broadcast spawners are also subject to other kinds of selection for certain traits associated with reproduction, including spatial and temporal synchrony in spawning and mechanisms that increase probabilities for union of spawned gametes.

Spawning Density

As intertidal organisms on exposed rocky shores, black abalone typically release gametes into environments of extreme turbulence. As a consequence, eggs and sperm must be released from adults in relatively close spatial and temporal proximity in order to have any chance of union and fertilization before rapid dispersal and loss of opportunity.

A central problem for conservation of black abalone is the dramatic reduction in densities over the past quarter-century in almost the entire geographic range of the species. Reductions in density are so extreme and widespread that considerable attention is now focused on assessment of critical density thresholds for successful reproduction, recruitment, and population sustainability. A review of critical density thresholds, below which recruitment failure occurs, for other marine, broadcast-spawning invertebrates (i.e., sea urchins, sea cucumbers, hard clams, scallops, giant clams, and geoduck clams) has revealed that critical density thresholds exist across a broad taxonomic range. However, despite apparent risks of local extinction when populations decline below critical density thresholds, there are several cases where combinations of circumstances allow populations to recover to densities above the critical thresholds. Thus, for black abalone the key conservation issues are identification of critical density thresholds and an understanding of circumstances, if any, that may allow escape from high risks of local extinction when thresholds are breached.

Babcock and Keesing (1999) estimated critical density thresholds at 0.15–0.20 m–2 for greenlip abalone (*Haliotis laevigata*). Tissot (2007) reviewed recruitment patterns in three long-term data sets for black abalone in California: in each case, recruitment failed when declining population densities fell below 0.75–1.1 m–2. Tissot (2007) noted that densities in most black abalone populations south of Cayucos, California, have fallen below the densities noted. Recent evidence suggests that disease-induced increases in the mortality rate of black abalone continue to move northward along the mainland coast of California (e.g., Raimondi *et al.*, 2002; Miner *et al.*, 2006). Thus, critical density thresholds are thought to have been violated for most of the black abalone populations in California, and because of the spread of the disease known as withering syndrome (as explained below), the number and geographic scope of populations with densities falling below sustainable levels is expected to increase.

Larval Settlement

A sequence of studies and discoveries by Morse and colleagues (Morse *et al.*, 1979; Morse and Morse, 1984; Trapido-Rosenthal and Morse, 1986; Morse, 1990; Morse, 1992), Douros (1985), and Miner *et al.* (2006) suggest that availability of crustose coralline algae in appropriate intertidal habitats may be significant to the success of the larval recruitment process in black abalone; and, that the presence of adult black abalone may facilitate larval settlement and metamorphosis because the activities and presence of the abalone favor the maintenance of substantial substratum cover by crustose coralline algae. Although crustose coralline algae are ubiquitous in rocky benthic habitats along the west coast of North America, a mechanistic understanding of processes that sustain these algal populations has not been established to our knowledge. If the presence of black abalone facilitates the abundance of crustose coralline algae, it follows that the issue of critical density thresholds may take on added importance.

Larval Dispersal and Recruitment

Indirect methods for assessing larval dispersal in abalone (Tegner and Butler, 1985; Prince *et al.*, 1988; Hamm and Burton, 2000; Chambers *et al.*, 2005; Chambers *et al.*, 2006; Gruenthal, 2007) point to consistent results. Given that most abalone larvae are drifting in the water for a period of about 3–10 days before settlement and metamorphosis (e.g., McShane, 1992), abalone in general, including black abalone, have limited capacity for dispersal over distances beyond a few kilometers, and are able to do so only rarely.

Tissot (2007) has estimated empirically that successful recruitment of black abalone requires the presence of local adult populations at densities of 0.75–1.1 m^{-2} or greater, and that the number of known populations of adult black abalone at or above putative threshold densities is diminishing over time in a geographically progressive manner. Tissot (2007) further noted that virtually all monitored black abalone populations continue to decrease in mean density over time. This combination of observations emphasizes the importance of critical density thresholds in the sustainability and conservation of black abalone populations throughout their range. Patterns of aggregation may mitigate effects of decline below a critical density threshold (VanBlaricom, unpublished data). However, only one or two populations in California that have sustained mass mortality due to withering syndrome are known to be increasing in numbers. Thus, even if an ability for black abalone to aggregate exists, it may not be sufficient to facilitate successful recruitment and population sustainability under current environmental conditions.

Growth and Maximum Size

Available data on black abalone growth suggest that young animals reach maximum shell diameters of about 2 cm in their first year, then grow at rates of 1–2 cm per year for the next several years. Growth begins to slow at lengths of about 10 cm, corresponding to an age range of 4–8 yrs. Beyond this point, growth is less predictable, shell erosion may become a significant factor, and size distributions for older animals may vary according to local conditions. Growth and erosion of shells may come into equilibrium in older black abalone, such that growth can be viewed as facultatively determinant.

Maximum recorded shell length for black abalone was listed at 213 mm by Wagner and Abbott (1990). Ault (1985) reported a maximum shell length of black abalone at 215 mm. Leighton (2005) indicated a shell length of 216 mm reported by Owen (unpublished observation). At least two black abalone of approximately 220 mm maximum shell length were known to be alive at San Nicolas Island in January 2007 (VanBlaricom, Neuman, and Witting, unpublished observations), but the cryptic locations of the animals have made measurements awkward and possibly not accurate. Monitoring and measurement of these individuals will continue in association with ongoing population surveys.

Mortality

Mortality rates caused by withering syndrome appear to be sensitive to fluctuations in local sea surface temperatures (Friedman *et al.*, 1997; Raimondi *et al.*, 2002; Harley and Rogers-Bennett, 2004; Vilchis *et al.*, 2005). There is evidence that, in the short term, population-scale mortality rates vary in space and time from near zero to high proportions of local populations. The available evidence suggests that mortality rates driven by withering syndrome are highest during periods following elevations in sea surface temperature (e.g., Raimondi *et al.*, 2002). Over the long term, all available evidence indicates substantial increases in mortality rates, and consequent reductions in densities, in populations throughout the range of black abalone that have been afflicted by withering syndrome (e.g., Tissot, 2007). More detail regarding the severe risk that withering syndrome poses to the future survival of the species is presented below (see *Summary of Factors Affecting the Species* and *Population Modeling: Geographic Spread of Disease vs. Disease Resistance*).

Physical oceanographic conditions, predation by octopuses, lobsters, sea stars, fishes, sea otters, and shorebirds, competition with sea urchins, and food limitation may all impose mortality at varying rates depending on black abalone life stage. The draft status report (VanBlaricom *et al.*, 2007) provides additional qualitative information regarding the relative importance of these sources of mortality. The importance of anthropogenic mortality (i.e., commercial and recreational harvest, illegal harvest, incidental losses, pollution) is also discussed in the draft status report and in other sections of this proposed rule (see *Summary of Factors Affecting the Species*).

Abundance

There are two types of data that can be examined to provide a better understanding of variation in black abalone abundance over time: fishery-dependent and fishery-independent data. Based on a detailed examination of these two data types, Tissot (2007) evaluated trends in black abalone abundance over the last 3 decades.

Fishery-dependent Information

An intertidal fishery focused on red (*Haliotis rufescens* Swainson, 1822), green (*Haliotis fulgens* Philippi, 1845), and black abalone began in the 1850s in Central California and in the 1880s in Baja California, Mexico (Bonnot, 1930; Lundy, 1997). The fishery peaked at 1,860 mt in 1879 (Cox, 1962). By 1913, the intertidal fishery was closed because of concerns regarding overfishing (Bonnot, 1930). From 1913–1928, commercial and recreational dive fisheries developed, but black abalone were not documented prior to 1940. During the 18th and 19th centuries, two predatory forces on black abalone populations in Southern California had been removed. First, the Native American Chumash and Gabrielino/Tongva cultures of the southern California Islands, who were known to have harvested black abalones in large numbers for food over periods of five to ten millennia, and fur hunters responsible for the elimination of southern sea otter populations south of Point Conception by the time of the U.S. Civil War. There is uncertainty regarding the ecological importance of sea otter predation on black abalone, but the potential for strong interactions is substantial given known effects of sea otter predation on red abalone (for more detailed information on the effects of sea otter predation see *Summary of Factors Affecting the Species* below).

California Department of Fish and Game landings data (1940–1993) indicate that black abalone were intensively exploited only after other more marketable species had been largely depleted. Black abalone landings peaked in 1973 at 868 mt. During the peak decade of black abalone fishing from 1972–1981, Rogers-Bennett *et al.* (2002) estimate that approximately 3.5 million individuals were taken in the commercial fishery, and an additional 6,729 animals were taken in the recreational fishery. By 1993 both fisheries for black abalone were closed due to concerns regarding severe population declines (Haaker *et al.*, 1992).

Rogers-Bennett *et al.* (2002) estimated baseline abundance, prior to overfishing and mass mortalities due to withering syndrome (for more detailed information on withering syndrome see *Summary of Factors Affecting the Species* below), for black abalone using landings data from the peak of the commercial and recreational fisheries (1972–1981), assuming that the population was at least as large as the number taken in the fishery, that the fishery ''sampled'' all size classes, and that no new individuals were added to the population during the 10–year peak of the fishery. With these assumptions, the baseline minimum estimate of abundance for black abalone prior to overexploitation and withering syndrome was 3.54 million animals. This estimate provides a historic perspective on patterns in abundance, defines a relevant baseline abundance against which to compare modern day trends, and helps to assess the species' current status and risks. However, it should be noted that the estimate was calculated using data from a period of time when black abalone reached extraordinary abundance levels on the Channel Islands, possibly in response to the elimination of subsistence harvests by indigenous peoples, limited public access in modern times, and regional-scale extinctions of sea otters.

The abalone fishery in Mexico dates to approximately 1860, but modern commercial harvests did not develop until the 1940s. The fishery is pursued by 22 fishing cooperatives, distributed across 4 management zones on the Pacific coast of the Baja California peninsula. Five cooperatives are present in management zone 1, which is the northernmost of the zones and extends from the U.S.-Mexico border to Punta Malarrimo, Baja California Sur.

Reported commercial fishery data for black abalone during 1990–2003 comes entirely from management zone 1. During this time period, the commercial

catch of black abalone in Mexico declined from a high of 28 mt in 1990 to <0.5 mt in 2003, an overall decline of greater than 98 percent (J. Palleiro, unpublished data; Sierra-Rodriguez *et al.*, 2006). These data suggest similar fishery declines to those in California. The decline in Mexico is attributed primarily to large mortality events associated with withering syndrome, rather than to overfishing.

Fishery-independent Information

The earliest fishery-independent black abalone abundance estimates were generated beginning in 1975 at survey stations on the Palos Verdes Peninsula of Los Angeles County, California (Miller and Lawrenz-Miller, 1993). Black abalone densities ranged from 1.0 to 6.8 m^{-2} from 1975–1976, but declined during the remainder of the survey interval to less than 0.3 m^{-2} by 1987. Douros (1987) reported densities as great as 127 m–2 in certain surge channels at Santa Cruz Island in 1983–1984, but typical densities within a study site ranged from 30 to 90 m–2. Other field studies during the 1980s on Santa Cruz Island yielded black abalone densities of 0 to 50 m^{-2} (Haaker *et al.*, 1992). Tissot (1995), also studying black abalone populations on Santa Cruz Island, found averages of 43 to 58 m^{-2} for surf-exposed and protected subpopulations, respectively, in 1987. These densities declined over the next 6 years due to withering syndrome, dropping to less than 1 m^{-2} by 1993. As of this writing, only one site on Santa Cruz Island (Willows Anchorage) has experienced an increase in local density since 1993.

Several studies monitoring black abalone abundance at other Channel Islands found similar declines through the late 1980s and early 1990s. From 1985 to 1989, mean densities for black abalone populations on Anacapa, Santa Rosa, Santa Barbara, and San Miguel islands were obtained annually along permanent transects established by the Channel Islands National Park (Richards and Davis, 1993). Densities ranged from 20 to 50 m^{-2} on early visits, but fell to <10 m^{-2} by 1989 for all islands except for San Miguel due to mass mortalities associated with withering syndrome. By 1996, local densities fell to 1.0 m^{-2} or less on San Miguel Island.

At San Nicolas Island, densities of black abalones averaged >10 m^{-2} at nine monitored sites from 1981 to the early 1990s. Withering syndrome was first seen at San Nicolas Island in spring 1992 (VanBlaricom *et al.*, 1993), and densities declined during the middle 1990s to <1 abalone m^{-2} at all sights except one (VanBlaricom, unpublished data. The highest local density of black abalone recorded among the several studies of island populations in the 1980s was 296 individuals, primarily adults, in a single quadrat of 1 m^2 at San Nicolas Island on November 23, 1988, at site 7 (VanBlaricom, 1993; unpublished data).

In recent years, three fishery-independent surveys for black abalone have been conducted along the mainland coast and offshore islands of Baja California, Mexico. In 2002, a survey for black abalone was done at Bahia Tortugas, just south of Punta Eugenia and located at the north end of management zone 2. Only four individuals were found, ranging in maximum shell diameter from 121 to 152 mm (Sierra Rodriguez *et al.*, 2006). A second survey was conducted in 2004. Black abalone were found at low densities where they occurred, with 98 percent of located animals measuring <120 cm in maximum shell diameter. No animals were found with symptoms of withering syndrome during the 2004 survey. Black abalone were found along the mainland coast of management zone 1, and on Isla Guadalupe and Isla San Jeronimo. The only black abalone found in Baja California Sur were at Bahia Tortugas (Sierra-Rodriguez *et al.*, 2006).

The third study was conducted in 2005 in regions of upwelling on rocky intertidal benches along the northern Baja California coast from Costa Azul to Punta Baja (Raimondi, unpublished data). Twelve sites, suspected to have been affected by withering syndrome, were surveyed for suitable habitat (rocky crevices) in the mid to low intertidal zone, and then timed searches were conducted for black abalone. Black abalone were not densely aggregated at any site surveyed in this study; however, a large proportion of the individuals found were small (<50 mm). This evidence of recent recruitment in northern Baja California is promising given that there is no evidence of successful recruitment to mainland California sites affected by withering syndrome (south of Pt. Piedras Blancas in northern San Luis Obispo County). Raimondi (unpublished data) hypothesized that the discrepancy between the patterns of recruitment in the two regions may be because: (1) healthy populations exist somewhere in Mexico (perhaps on offshore islands), and these are seeding northern areas; or (2) recruitment dynamics are different for withering syndrome-impacted sites in Mexico versus those in California. Fresh shells, in some cases containing flesh, were found at three of the twelve sites, suggesting that withering syndrome may still be impacting areas of Northern Baja California. Large numbers of older shells were identified at a few sites, suggesting that black abalone were abundant in these areas in the past.

Consideration as a ''Species'' Under the ESA

The ESA defines a species as ''any species or subspecies of wildlife or plants, or any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Black abalone is a marine invertebrate and is not a subspecies; therefore, it may not be subdivided into a listable unit below the taxonomic species level.

Status of Black Abalone

Black abalone have experienced major declines in abundance that prompted eventual closure of the commercial and recreational fisheries and resulted in local extinctions and low local densities in the majority of long-term monitoring studies in California. These declines have been particularly severe in the southern California Islands, which were major foci for the commercial fishery from 1970–1993 and where abalone densities were high (>40 m^{-2}) as late as the mid–1980s. Although the geographic range of black abalone extends to northern California, the vast majority of abalone populations have historically occurred south of Monterey, particularly in the Channel Islands (Cox, 1960; Karpov *et al.*, 2000). Thus, black abalone populations have been severely reduced over an area that covers more than half of the species' geographic range, and black abalone from these areas historically comprised greater than 90 percent of the commercial fishery catch and the majority of the adult black abalone populations in California.

Both the commercial fishery trends and long-term monitoring studies indicate that significant declines in black abalone abundance began in southern California in the mid–1980s. The first evidence of decline came from Palos Verdes in the late 1970s and early 1980s and at Laguna Beach in 1985–1986 (Tissot, 1988). However, in the case of Palos Verdes, the decline may have been due to other factors (Miller and Lawrenz-Miller, 1993). By 1986, declining populations and associated observations of withering syndrome had spread to the northern Channel Islands, starting at Anacapa, progressing to Santa Rosa, Santa Cruz, and Santa Barbara islands, and finally reaching San Miguel Island in 1989 (Tissot, 1991; Davis *et al.*, 1992; Tissot, 1995). By the early 1990s, declines were observed on San Nicolas Island (VanBlaricom *et al.*, 1993) and

north of Point Conception on the mainland to Government Point, Santa Barbara County (Altstatt *et al.*, 1996). During the 1990s, declines in abundance were noted north of Government Point to Cayucos in San Luis Obispo County (Altstatt *et al.*, 1996; Raimondi *et al.*, 2002). Noted declines were also observed in central Baja California, Mexico, around Bahia Tortugas during El Nino events in the late 1980s and 1990s (Altstatt *et al.*, 1996; Pedro Sierra-Rodriquez, personal communication) and may be linked to declines in the fishery that occurred in the 1990s. Thus, the spread of withering syndrome is strongly associated with declines in abundance and with a pattern of increased northward expansion co-occurring with increasing coastal warming and El Nino events (Tissot, 1995; Altstatt *et al.*, 1996; Raimondi *et al.*, 2002).

To our knowledge there are no data available on black abalone populations north of San Mateo County on the mainland coast of California. As a consequence, we lack information on the remaining stocks of black abalone not influenced by withering syndrome. The two northernmost sites have either not been studied since 1995 (Ano Nuevo; Tissot, 1995) or have only been recently established in large, dispersed areas (Pigeon Point; Raimondi and Miner, pers. comm.). Establishment of long-term monitoring studies in northern California (e.g., in San Francisco County and north of the Golden Gate) would serve an important need in documenting northward progression of withering syndrome and mass mortality in the northern limit of the geographic range of black abalone.

Natural recovery of severely reduced abalone populations can be a very slow process (e.g., Tegner, 1992). This is largely due to the low reproductive efficiency of widely dispersed adult populations coupled with short larval dispersal distances (see *Reproduction* and *Spawning Density* above). Therefore, severely reduced populations, in addition to providing few reproductive adults, also experience reduced effectiveness of fertilization and eventual recruitment of larval abalone.

Moreover, many studies have shown that abalone larvae generally do not disperse widely. For example, Prince *et al.* (1988) and McShane (1992) showed a strong correlation between the abundances of adult and newly recruited abalone at several sites in South Australia, which suggests that larvae are not dispersed very far from their point of origin. Similarly, Tegner (1992) showed that recruitment of juvenile green abalone was rare in Palos Verdes, California, where adult abalone were very uncommon even though abundant adult stocks were found less than 30 km away in the Channel Islands. Thus, although more abundant black abalone populations occur in central and perhaps northern California, decimated stocks in southern California are unlikely to receive significant recruitment from these distant populations (Hamm and Burton, 2000).

Studies indicate that a local adult density ''threshold'' exists and influences local recruitment. Recovery will largely depend on the density of local brood stocks and whether this density is below the critical value necessary for successful recruitment (Tegner, 1992). Based on field experiments, Babcock and Keesing (1999) showed that recruitment failure occurred in greenlip abalone at adult densities of 0.15–0.20 m^{-2}. Based on empirical data from three long-term studies of black abalone in California, recruitment failure occurred below adult densities of 0.75–1.10 m^{-2}. Given that the majority of populations south of Cayucos in central California are below this threshold, many significantly so, it seems unlikely that these populations will be able to recover naturally to their former abundances, at least in the near future. Moreover, given the continued decline of most populations and the continued northward expansion of withering syndrome with warming events (Raimondi *et al.*, 2002), it seems likely that black abalone populations will continue to decline on a large scale.

Assessment of Risk of Extinction

Analysis of Demographic Risk

The demographic risks that black abalone face were assessed by considering four criteria (abundance, growth rate/productivity, spatial structure/connectivity, and genetic and life history diversity) and other key risks (e.g., threats). These criteria provide a strong indication of the level of extinction risk faced by a species. A species at very low levels of abundance and with few populations will be less tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes. Productivity or a growth rate that is unstable or declining over a long period of time may reflect a variety of causes, but indicates poor resiliency to future environmental variability or change. For species at low levels of abundance, in particular, declining or highly variable productivity confers a high level of extinction risk. A species with a geographic spatial structure that is not widely distributed across a variety of well-connected habitats will have a diminished capacity for recolonizing locally extirpated populations, and is at increased risk of extinction due to environmental perturbations and catastrophic events. A species that has lost locally adapted genetic and life-history diversity may lack the raw resources necessary to endure short- and long-term environmental changes.

The SRT concluded that black abalone face high levels of risk in each of the four demographic criteria. The SRT unanimously scored the species' abundance as high risk due to critically low population abundance as indicated by local density levels. Severe declines in abundance (greater than 90 percent) have occurred at the majority (76 percent) of long-term monitoring study sites, including all sites in southern California (Tissot, 2007). The high risk to abundance is attributable to population densities below the minimum threshold density necessary for successful fertilization (0.75 – 1.1 m^{-2}). Additionally, this factor contributes significantly to long-term risk of extinction, and, coupled with low spatial connectivity between populations (i.e., making recolonization unlikely) and the ongoing activity and expansion of withering syndrome, is likely to contribute to short-term risk of extinction in the foreseeable future.

The majority of the SRT concluded that there is a very high risk of black abalone extinction due to low growth and productivity. Population growth is negative in all areas south of Cayucos, California, except for two locations in the southern California Islands. Furthermore, all sites south of Cayucos, but for the two isolated island locations, have exhibited recruitment failure because of local densities below the minimum threshold for successful fertilization. This high level of risk due to poor growth rate and productivity, by itself, likely indicates a high risk of extinction in the near future.

The majority of the SRT concluded that black abalone are at high to very high risk because of compromised spatial structure and population connectivity. Dispersion data among local populations indicates that there is poor connectivity among populations. Such limited connectivity reduces the likelihood that disease resistance to withering syndrome, if it exists, will spread to other populations. Furthermore, the poor connectivity among populations makes it unlikely that populations extirpated by disease or catastrophic events will be recolonized in the foreseeable future.

The SRT unanimously concluded that black abalone are at high extinction risk because of low genetic diversity. Genetic diversity in a population is determined by estimating the number of possible alleles that may exist at gene loci. Genetic diversity provides a mechanism for populations to adapt to their changing environment. Thus, the more genetic variation in a population, the better the chance that at least some individuals will have the capability to adapt to a new environment and will be able to pass this capability on to subsequent generations. Loss of genetic diversity in populations may occur because of factors that cause a major reduction in abundance and/or isolate a subset of individuals from the rest of the population. Genetic diversity has likely declined in black abalone populations because of catastrophic losses that the species has experienced throughout a large part of its range. As a result, populations have become small and more isolated, exacerbating the effects of naturally occurring low exchange rates between populations because of limited larval dispersal. Overfishing and disease have contributed to the loss of genetic diversity within black abalone populations, and, as a result, the ability of extant (i.e., currently existing) black abalone populations to exhibit resilience in the face of other threats, such as other diseases, has been compromised. Low genetic diversity, in combination with low spatial connectivity between populations, suggests that even if some genetic resiliency exists locally, it is not likely to spread and establish itself in other extant populations.

Population Modeling: Geographic Spread of Disease vs. Disease Resistance

VanBlaricom *et al.* (2007) calculated the probability of extinction with time using a simple formula that accounts for the main threat that black abalone faces, withering syndrome. The probability of extinction is considered as a function of two parameters (R=the probability that the northward spread of withering syndrome will cease very soon and S=the probability that resistance will emerge very soon on a large spatial scale in the host), using the logic that if withering syndrome alone results in a high enough risk of extinction in a short time (i.e., 30 years-the expected life span of black abalone), then that may suffice to evaluate whether the species is in danger of extinction currently or in the foreseeable future.

Assuming R and S are independent, the overall probability of functional extinction (i.e., the reproductive potential of isolated survivors is zero and no viable populations remain) in 30 years based on the SRT members' best professional judgment was 95.7 percent. The collective view of the SRT is that the risk is at a level where functional extinction without active management has a very high likelihood of occurring. This probability should not be interpreted as a prediction of the demise of the last individual black abalone within 30 years.

Summary of Factors Affecting the Species

According to Section 4 of the ESA, the Secretary of Commerce determines whether a species is threatened or endangered because of any (or a combination) of the following factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; or other natural or man-made factors affecting its continued existence. We examined these factors for their historic, current, and/or potential impact on black abalone and considered them, along with current species distribution and abundance, to help determine the species' present vulnerability to extinction.

Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Most of the threats that result in substrate destruction, such as coastal development, recreational access, cable repairs, nearshore military operations and benthic community shifts, occur infrequently, have a narrow geographic scope, or have uncertain or indirect effects on black abalone. Some exceptions may exist in the cases of sedimentation and sea level rise in that these threats have the potential to produce more widespread impacts, but the certainty that these factors will affect black abalone is low. For example, sea level rise may result in loss of suitable habitat in a preferred depth range because of increased erosion, turbidity, and siltation, but we currently lack information to determine whether these habitat changes will be important factors for further decline.

Suboptimal water temperatures are likely to have contributed to the decline of black abalone and pose a serious threat to the ability of the species to persist because elevated water temperatures are correlated with accelerated rates of withering syndrome transmission and disease-induced mortality. Water temperatures can become elevated because of anthropogenic sources of thermal effluent and long-and short-term climate change (e.g., global climate change and El Nino - Southern Oscillation). For example, discharge from the Diablo Canyon nuclear power plant in San Luis Obispo County, California and recent El Nino - Southern Oscillation oceanographic events in the Pacific Ocean have produced short-term periods of ocean warming and are associated with increased rates of mortality due to withering syndrome over relatively small spatial scales. Although there is no explicitly documented causal link between the existence of withering syndrome and global climate change, patterns observed over the past 3 decades suggest that progression of ocean warming associated with large-scale climate change may facilitate further and more prolonged vulnerability of black abalone to effects of withering syndrome.

Finally, we view the severity, geographic scope, and level of certainty that black abalone are affected by reduced food quality and quantity as being relatively low compared to other factors. Davis *et al.* (1992) posited that a key consequence of kelp forest ecosystem disruption, due to a variety of reasons such as El Nino events, was reduced food supply for black abalone. Although reductions in kelp abundance occurred in the early 1980s, subsequent studies (e.g., Friedman *et al.*, 1997) have suggested that reduced food supply probably did not trigger the mass mortalities caused by withering syndrome. Kelp abundances had recovered from El Nino effects in southern California by the time withering syndrome was first observed in 1985, and the abundant black abalone populations at San Nicolas Island showed no response in density to the 1982–1984 El Nino disturbances, despite dramatic reductions in kelp abundance near the Island (VanBlaricom, 1993). Thus, this factor has likely not played an important role in the overall decline of the species, and, unless new information surfaces, this factor is not believed to pose a significant threat in the future.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Throughout most of the species' range, local densities are below the critical threshold density required for successful spawning and recruitment. This predicament has occurred because of mass mortalities due to withering syndrome (see Disease or Predation below) and overutilization for

commercial and recreational purposes (i.e., prior to the fishery closure in 1993). Data from abalone fisheries in California and Baja California, Mexico, indicate a decline in landings of at least 93 percent during the 1990s. These reductions, however, may not be indicative of declines due only to fishing activities because mass mortalities caused by withering syndrome had begun in many locations at approximately the same time. Rogers-Bennett *et al.* (2002) estimate that the California abalone fisheries may have contributed up to 99 percent of the reduction in black abalone abundance in the United States (see Abundance section above). Thus, the estimated take of 3.5 million black abalone during commercial and recreational abalone fishing likely contributed to the decline of local densities. This threat no longer exists in California because the black abalone fisheries were closed in 1993. The limited information we have from Mexico makes it difficult to ascertain the relative importance of fishing to overall species decline.

Disease or Predation

Withering syndrome in black abalone is caused by a *Rickettsia*-like prokaryotic organism, *Candidatus* Xenohaliotis californiensis' (Gardner *et al.*, 1995; Friedman *et al.*, 1997; Friedman *et al.*, 2000; Friedman *et al.*, 2002). *Candidatus* Xenohaliotis californiensis (hereafter ''abalone rickettsia'') occurs in epithelial cells of the gastrointestinal tract. Infected symptomatic animals are unable to transfer digested food materials from the gut lumen into the epithelial cells and beyond, resulting in malnutrition, dramatic loss of tissue mass, and eventual death. Physiological manifestations of withering syndrome include reduced food intake and oxygen consumption, and increased ammonia excretion (Kismohandaka *et al.*, 1993). The same pathogen is known to cause symptoms of withering syndrome in red abalone, and mortality rate is positively associated with water temperature in both red and black abalone (Moore *et al.*, 2000a, b; Vilchis *et al.*, 2005). Andree *et al.* (2000) have developed a rapid DNA-based test for the pathogen that causes withering syndrome, allowing detection of infections prior to onset of clinical symptoms in both black and red abalone. Moore *et al.* (2001) have developed a histological method for rapid quantification of the intensity of infections by the pathogen that causes withering syndrome.

In wild animals symptomatic for withering syndrome, weakness resulting from the disease may cause the individual to lose the typically secure grip on the rocky substratum in response to wave impacts, allowing attack by predators or scavengers before the individual succumbs to the disease itself. Transfer of pathogens from animal to animal is fecal to oral on a local scale, and is therefore likely facilitated by aggregation of abalone in natural habitats. Transmission pathways on large spatial scales are entirely unknown at present. The pathogen for withering syndrome is now reported to be endemic to all the coastal marine waters of central (Friedman and Finley, 2003) and southern California (Moore *et al.*, 2002) south of San Francisco. Information from Isla de Cedros and Islas San Benito, Baja California, Mexico, on pink (Haliotis corrugata Wood, 1828; termed ''yellow'' in Mexico) and green (termed ''blue'' in Mexico) abalone indicated the presence of abalone symptomatic for withering syndrome, and the presence of abalone rickettsia in tissue samples, for both species (Tinajero *et al.*, 2002). Recent data indicate the presence of abalone rickettsia in farmed and wild green ormer (*Haliotis tuberculata*) symptomatic for withering syndrome at a number of locations in the coastal marine waters of western Europe (Balseiro *et al.*, 2006).

Evidence of effects of withering syndrome on black abalone was first noticed along the south shore of Santa Cruz Island in 1985, when a fisherman noticed a large number of dying black abalone and empty shells (Lafferty and Kuris, 1993). The primary symptoms of disease noted at the time included pedal atrophy and a diminished ability to maintain a grip on rocky substrata. Haaker *et al.* (1992) and Richards and Davis (1993) described the first observations of mass mortalities of black abalone in previously monitored populations on the island shores of Channel Islands National Park in 1986, and broadened the list of recognized symptoms to include epipodial and mantle discoloration, and lack of response to tactile stimulation. Haaker *et al.* (1992) were the first authors to apply the term ''withering syndrome'' to the suite of symptoms and consequent mass mortalities observed in the field. Between 1985 and 1992, mass mortalities occurred at San Miguel, Santa Rosa, Anacapa, Santa Barbara, and San Clemente Islands, in all cases with symptoms indicating withering syndrome (Davis *et al.*, 1992; Haaker *et al.*, 1992; Lafferty and Kuris, 1993; Richards and Davis, 1993). Evidence of withering syndrome was first seen at San Nicolas Island in spring 1992 (VanBlaricom *et al.*, 1993) and was followed by widespread mass mortalities at the Island in the middle 1990s (Tissot, 2007). The delayed appearance of withering syndrome at San Nicolas Island, as compared to the other southern California Islands, remains unexplained but may have reflected patterns of dispersal by disease propagules. To our knowledge, no effort has been made to assess effects of withering syndrome at Santa Catalina Island, though the Island historically supported black abalone populations.

The first reported occurrence of significant numbers of black abalone with symptoms of withering syndrome on the California mainland was in San Luis Obispo County in 1988 (Steinbeck *et al.*, 1992). Afflicted animals were found primarily within Diablo Cove, which receives warmed effluent seawater from the cooling system of a nearby nuclear power plant. A mass mortality of black abalone occurred at the site between 1988 and 1989, with mortality rates correlating well to local patterns of sea temperature elevation associated with power plant effluent.

Since the mid–1990s withering syndrome has appeared sequentially in progressively more northward populations of black abalone on the mainland California coast (Altstatt *et al.*, 1996; Raimondi *et al.*, 2002; Miner *et al.*, 2006). The most recent observations available suggest that significant mortalities of black abalone associated with withering syndrome have occurred at least as far north as Pt. Piedras Blancas in northern San Luis Obispo County near San Simeon. Surveys for the microorganism responsible for withering syndrome have found positive results as far north as San Francisco (Finley and Friedman, 2000; Friedman and Finley, 2003).

In the vast majority of cases where long-term monitoring data are available, the appearance of animals symptomatic for withering syndrome in a population lead inevitably to rapid and dramatic declines in population size, most often in excess of 90 percent (Tissot, 2007). The pattern has been documented for black abalone populations throughout the range in California. Reports indicate similar trends for black abalone populations in Mexico. As noted earlier, the exceptions are at San Miguel Island, where rates of decline at some long-term study sites have been atypically slow, and at one location each on Santa Cruz and San Nicolas islands. At Santa Cruz Island, a recruitment event in 2004 at Willows Anchorage produced an increase in local densities that persisted at least until this writing. At San Nicolas Island, black abalone numbers

at study site 8 (as described by VanBlaricom, 1993) have increased and experienced recruitment each year since reaching a low point in 2001 due to withering syndrome, except for a small decline between surveys in 2006 and 2007. The pattern at this site can be plausibly interpreted as a possible result of genetically-based disease resistance on a local scale. These observations are exceptions that suggest the potential for resilience and recovery in populations reduced dramatically by withering syndrome. However, Tissot's (2007) litany of negative impacts of withering syndrome in multiple locations across the entire range of the species, coupled with evidence of increasing geographic scope of impact, argues to the contrary. The preponderance of evidence indicates that withering syndrome continues to damage the size and sustainability of black abalone populations on a large scale, with little plausible basis for any predictions of reversal.

Prior to the appearance of withering syndrome there was little evidence of significant diseases in black abalone (Haaker *et al.*, 1992). There is now substantial concern among scientists and marine resource managers about the emergence of virulent diseases in marine organisms on a global scale, in association with ocean warming in recent decades (e.g., Harvell *et al.*, 1999; Harvell *et al.*, 2002). Recent surveys of the literature suggest that the frequency of reporting of new diseases has increased for several major marine taxa, including mollusks (e.g., Ward and Lafferty, 2004). The appearance of withering syndrome is consistent with the reported pattern. As described above, mortality rates associated with withering syndrome often correlate to positive anomalies in sea surface temperature. Nevertheless, there is no explicitly documented causal link between the existence of withering syndrome and global climate change.

We conclude that withering syndrome has been and continues to be the primary threat contributing to the decline of black abalone. The disease has caused mass mortality and near extirpation of populations throughout most of the species' range, and the disease continues to spread to populations in Monterey County and to the north. The rate at which the disease is spreading northward will likely be exacerbated by suboptimal (i.e., warmer) water temperatures that may result due to a variety of factors.

Abalone face non-anthropogenic predatory pressure from a number of consumer species such as gastropods, octopuses, lobsters, sea stars, fishes and sea otters (Ault, 1985; Estes and VanBlaricom, 1985; Shepherd and Breen, 1992). At San Nicolas Island, VanBlaricom (unpublished observations) has observed directed predation on black abalone in rocky intertidal habitats by the ochre star *Pisaster ochraceus* [Brandt, 1835]), the octopus *Octopus bimaculatus* (Verrill, 1883), a large cottid fish, the cabezon (*Scorpaenichthys marmoratus* Girard, 1854), and a shorebird, the black oystercatcher *Haematopus bachmani* Audubon, 1838. In addition, VanBlaricom (unpublished observations) has observed ingestion of small black abalone by three taxa normally viewed as herbivores: the lined shore crab *Pachygrapsus crassipes* (Randall, 1839); the purple sea urchin *Strongylocentrotus purpuratus* (Stimpson, 1857); and the turban snails Tegula spp.

Despite the large number of identified predators on abalone, we are aware of no studies that estimate mortality rates of black abalone in association with the predator species that have been identified. While the effects of sea otter predation on red abalone are well documented, there are few data available to evaluate relationships of sea otters with other species of abalone in California. Given that black abalone overlap in habitat use, size distributions, and ecological attributes with red abalone is limited, the relationship between sea otters and black abalone is uncertain. Sea otters are known to feed on black abalone, but the quantitative ecological strength of the interaction has not been directly investigated and remains poorly known.

Black abalone have been exposed to varying predation pressure through time, and this pressure is likely to continue. However, in the past, black abalone populations were much more robust and able to absorb losses due to predation without compromising viability. Now that the few remaining populations are smaller, more isolated, and still declining throughout the range, predation may pose risk to the future survival of the species. In addition, non-anthropogenic predation could limit the effectiveness of future recovery efforts by interacting with other limiting factors.

Inadequate Regulatory Mechanisms

There is evidence suggesting that aquaculture operations have provided a pathway for the spread of withering syndrome, and, unless the industry is carefully regulated in the future, may continue to do so. Past State and Federal regulations were not adequate to prevent the spread of the disease within and outside the United States through importation of infected animals from one aquaculture facility to another and outplanting of infected animals from aquaculture facilities to the wild. It is through the latter pathway that abalone rickettsia may have been introduced to two healthy populations of black abalone north of San Francisco (Friedman and Finley, 2003), placing those populations at higher risk of extinction.

Recent state regulations to carefully monitor the health of abalone at aquaculture facilities and control the importation/exportation of abalone between facilities will likely reduce the threat that the aquaculture industry poses in the future. Currently, the state monitors aquaculture facilities for introduced organisms and disease on a regular basis. There is also a restriction on out-planting of abalone from facilities which have not met certification standards. If new state regulations to carefully monitor aquaculture facilities are effective, the future threat that they pose to black abalone will be limited. In fact, aquaculture may emerge as being an important, and possibly the only effective recovery tool, for restoring black abalone populations through captive propagation and enhancement efforts.

Purposeful illegal harvest, typically termed poaching, has been a source of mortality for black abalone throughout their range since the establishment of harvesting regulations by the State of California. The chronic virtual absence of black abalone populations from highly accessible intertidal habitats near human population centers in California during the twentieth century can plausibly be viewed as evidence for the importance of poaching as a source of abalone mortality.

Since the closure of the California black abalone fishery in 1993, a number of black abalone poaching cases along the California mainland coast, particularly in the northern portion of the black abalone's geographic range, have been documented by the California Department of Fish and Game (CDFG) from 1993–2003 (Taniguchi, unpublished data). Some of these cases resulted in well-publicized arrests and trials of black abalone poachers. These events often involved removals of tens to hundreds of abalone, across all size categories present in the exploited populations, and without regard to harvest size limits in effect prior to commercial and recreational fishery closures. Enforcement effort has varied over the 10–year time period (1993–2003), increasing in 2000 because of

coordinated efforts between CDFG marine and coastal regions and planned overflights along the Central California coast during low tides. CDFG wardens approximate that 80 percent of seized abalone were returned alive to the wild, but these animals were not monitored for long-term survival, and thus, these data are of limited use for calculating poaching-induced mortality estimates. The problem of poaching persists, and there is no evidence that existing regulatory mechanisms have effectively reduced the risks posed by illegal take. Inadequate regulatory mechanisms are likely to have contributed to the decline of black abalone and pose a serious threat to the ability of the species to recover.

Other Natural or Man-made Factors

Environmental pollutants and toxins are likely present in areas where black abalone have occurred and still do occur, but evidence suggesting causal and/or indirect negative effects on black abalone due to exposure to pollutants or toxins is lacking. Before a causal link between the bacteria that causes withering syndrome and mass mortalities of black abalone was established, efforts were made to link mass mortalities to pollutant concentrations (Gardner *et al.*, 1995); however, no link could be identified. There is one instance of abalone mortality associated with a pollution event, described by Martin *et al.* (1977). Toxic levels of copper in the cooling water effluent of the Diablo Canyon nuclear power plant were associated with abalone mortalities in a nearshore cove that received significant effluent flows. Growth and reproduction of black abalone were reported to have been impaired on the Palos Verdes Peninsula (Los Angeles County, California) in the late 1950s and early 1960s, in association with apparent combined effects of a significant El Nino event and poor water quality resulting from large-volume domestic sewage discharge by Los Angeles County (Leighton, 1959; Cox, 1962; Young, 1964; Miller and Lawrenz-Miller, 1993). There is ongoing concern that accidentally spilled oil from offshore drilling platforms or various types of commercial vessels could occur near shore in California and could affect a significant proportion of black abalone habitat; however, at this time we are uncertain how such an event would impact the species' overall status. The overall risk that environmental pollutants and toxins have posed is probably low, given their limited geographic scope and uncertain effects on black abalone; however, a single event in the future, depending on where it occurs, could irreparably damage the few remaining viable populations of black abalone.

SRT Assessment of Overall Extinction Risk

The SRT's analysis of overall risk to black abalone used categories that correspond to definitions in the ESA: in danger of extinction; likely to become endangered in the foreseeable future; or neither. The overall extinction risk assessment reflected informed professional judgment by each SRT member. This assessment was guided by integrating information about demographic risks, a consideration of the interactions among these risks, population projections over the next 30 years (i.e., time span approximating the average black abalone life span and a reasonable horizon for projecting current conditions into the future), as well as threats and other factors affecting black abalone.

The SRT concluded unanimously that black abalone is in danger of extinction throughout all of its range. The spread of withering syndrome poses imminent and significant risk to the species and exacerbates the high levels of demographic risk to which black abalone are subject, including extremely low local densities, low levels of growth and productivity, limited spatial structure and connectivity, and loss of genetic diversity. In addition, the SRT estimated that there is approximately a 96–percent probability that black abalone will suffer functional extinction within the next 30 years.

Consideration of ''Significant Portion of Its Range''

Because we conclude that black abalone is in danger of extinction throughout all of its range, it is not necessary for us to consider the question of whether black abalone is at risk throughout a significant portion of its range.

Efforts Being Made to Protect the Species

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making a listing determination, we first assess a species' level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks.

In judging the efficacy of existing protective efforts, we rely on the joint NMFS-U.S. Fish and Wildlife Service (FWS) ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determining whether a species should be listed as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: the necessary resources (e.g., funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability. There are circumstances where threats are so

imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

Conservation measures that may apply to listed species include conservation measures implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through Federal or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

As evaluated pursuant to PECE, the protective efforts described below do not as yet, individually or collectively, provide sufficient certainty of implementation and effectiveness to counter the extinction risk assessment conclusion that the species is in danger of extinction throughout its range.

National Marine Fisheries Service-Species of Concern Program

Black abalone was added to NMFS' Candidate Species list on June 23, 1999 (64 FR 33466). The NMFS' Candidate Species List was revised and redefined and the NMFS' Species of Concern List was created on April 15, 2004 (69 FR 19975). Species of Concern are those species about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. On October 17, 2006 (71 FR 61021), we formally announced initiation of a black abalone status review and at that time the species became a Candidate Species. Candidate Species are those petitioned species that are actively being considered for listing as endangered or threatened under the ESA, as well as those species for which we have initiated an ESA status review that has been announced in the **Federal Register**. Neither ''Candidate Species'' nor ''Species of Concern'' designations carry any procedural or substantive protections under the ESA, and thus, no federal measures that provide protection for black abalone are currently in place.

National Marine Sanctuaries Program

Three coastal national marine sanctuaries in California contain intertidal habitat suitable for black abalone: Channel Islands National Marine Sanctuary (CINMS), Monterey Bay National Marine Sanctuary (MBNMS), and Gulf of the Farallones National Marine Sanctuary (GFNMS). These sanctuary sites, administered by the National Oceanic and Atmospheric Administration, are protected by federal regulations pursuant to the National Marine Sanctuaries Act of 1972 as amended (16 U.S.C. 1431 *et seq.*). The regulations, which are similar at all three sites, provide protection against some of the threats to black abalone. At all three sanctuaries, the inshore boundary extends to the mean high water line, thus encompassing intertidal habitat.

Direct disturbance to or development of black abalone intertidal habitat is regulated at all three national marine sanctuaries by way of a prohibition on the alteration of, construction upon, drilling into, or dredging of the seabed (including the intertidal zone), with exceptions for anchoring, installing navigation aids, special dredge disposal sites (MBNMS only), harbor-related maintenance, and bottom tending fishing gear in areas not otherwise restricted.

Water quality impacts to black abalone habitat are regulated by strict discharge regulations at all three national marine sanctuaries. Essentially, regulations provide that no discharge or deposit of pollutants is allowed within these sanctuaries, except for effluents required for normal boating operations (e.g., vessel cooling waters, effluents from marine sanitation devices, fish wastes and bait).

Although these national marine sanctuaries do not regulate the take of black abalone, networks of marine reserves and marine conservation areas have been established by the CDFG within the CINMS and along portions of the MBNMS. Within these areas, especially within CINMS where the protected areas have been in place since 2003 and are within the Channel Islands National Park, multi-agency patrols provide elevated levels of enforcement presence and increase protection against poaching of black abalone.

Full texts of the current CINMS, MBNMS and GFNMS regulations discussed above can be found at 15 Code of Federal Regulations (CFR), parts 922.71, 922.132, and 922.91, respectively. However, all of these sanctuary sites are currently undergoing management plan review processes, which include reviews of and updates to the regulations. Although the regulations may be modified, the level of protection provided to black abalone is not expected to decrease from that described above, and possibly may increase should proposed prohibitions be adopted for the release of introduced species, and should stricter regulations be adopted regarding large vessel discharges.

In summary, while the Sanctuary regulations provide protection against some of the threats to black abalone and this level of protection may increase if new management plans are adopted, these regulations are unlikely to stop the progression of withering syndrome in the near future. At best, they may help slow down the rate at which the disease is progressing.

State/Local Programs

The depleted condition of abalone resources prompted the California Fish and Game Commission to eventually close all abalone fisheries south of San Francisco by 1997, beginning with the black abalone fishery in 1993. The southern abalone fishery was closed indefinitely with the passage of the Thompson bill (AB 663) in 1997. This bill created a moratorium on taking, possessing, or landing abalone for commercial or recreational purposes in ocean waters south of San Francisco, including all offshore islands. The Thompson bill also mandated the creation of an Abalone Recovery and Management Plan (ARMP) which was finalized in December 2005. The bill further required the Fish and Game Commission to undertake abalone management in a manner consistent with the ARMP.

The CDFG's ARMP provides a cohesive framework for the recovery of depleted abalone populations in southern California, and for the management of the northern California fishery and future fisheries. All of California's abalone species are included in this plan: red, green, pink, white (*Haliotis sorenseni* Bartsch, 1940), pinto (*H. kamtschatkana* Jonas, 1845, including *H.k. assimilis*), black, and flat abalone (*H. walallensis* Stearns, 1899). The plan also refers to a state aquaculture facility monitoring program that aims to ensure that aquaculture facilities in California will not facilitate transmission of disease and/or invasive/exotic species within or outside the State.

Abalone in California vary in status from populations bordering on extinction (white abalone) to a sustainable population with a margin of harvestable animals that is still being fished (northern California red abalone). Recovery of at-risk abalone species and management of abalone fisheries are separate but continuous and complementary processes in the ARMP. The recovery portion of the plan addresses all abalone species that are

subject to the fishing moratorium. The management portion of the plan applies to populations considered sustainable and fishable, such as the current northern California red abalone fishery. The ultimate goal of recovery is to move species from a perilous condition to a sustainable one with a margin of abalone available for fishing. The ultimate goal of management is to maintain sustainable fisheries under a long-term management plan that can be adapted quickly to respond to environmental or population changes.

The ARMP provides a mechanism for helping to slow the progression of disease and invasive/exotic species through better monitoring of aquaculture facilities, however, this effort may only make a relatively small difference to the threat that disease poses given that spread of withering syndrome is due largely to factors other than aquaculture operations. The ARMP also provides a framework for restoring black abalone populations through translocation and captive propagation and enhancement programs; however, detailed plans and methodologies have neither been drafted nor tested and therefore their effectiveness for conserving black abalone remains uncertain.

International Programs

The World Conservation Union (IUCN) publishes a Red List of species that are at high risk of extinction and, when data are sufficient, categorizes species as either Extinct (EX), Extinct in the Wild (EW), Critically Endangered (CR), Endangered (EN), Vulnerable (VU), Near Threatened (NT), or of Least Concern (LC) (IUCN, 2001). In 2003 the IUCN, based on an assessment by Smith *et al.* (2003), placed black abalone on the Red List as Critically Endangered under criterion A4e. Under criterion A4, a species may be classified as Critically Endangered, Endangered, or Vulnerable when its population size, measured over the longer of 10 years or three generations, has declined greater than or equal to 80, 50, or 30 percent respectively, due to an ''observed, estimated, inferred, projected or suspected population reduction (up to a maximum of 100 years) where the time period must include both the past and the future, and where the causes of reduction may not have ceased or may not be understood or may not be reversible, based on direct observation, an index of abundance appropriate to the taxon, a decline in area of occupancy, extent of occurrence and/or quality of habitat, actual or potential levels of exploitation, or the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites'' (IUCN, 2006, p. 10). Inclusion on the IUCN Red List does not necessarily convey any regulatory protection for black abalone.

Proposed Determinations

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the petition, the draft status report, and other available published and unpublished information, and have consulted with species experts and other individuals familiar with black abalone. On the basis of the best available scientific and commercial information, we conclude that black abalone is presently in danger of extinction throughout all of its range and should be added to the list of federally endangered species. The major risks that black abalone face include: (1) the spread of a disease called withering syndrome; (2) low adult densities below the critical threshold density required for successful spawning and recruitment; (3) suboptimal water temperatures that have accelerated the spread of withering syndrome; (4) reduced genetic diversity that will render extant populations less capable of dealing with both long- and short-term environmental or anthropogenic challenges; and (5) illegal harvest of black abalone. The principal threat to black abalone is withering syndrome, which has caused mass mortality and near extirpation of populations in the recent past and threatens extant populations. The spread of withering syndrome threatens the species with a very high probability (96 percent) of extinction within the next 30 years. This threat is unlikely to be ameliorated by current conservation efforts.

Service Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the 1994 peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we are obtaining independent peer review of the draft status review report, which supports this proposal to list black abalone as endangered; all peer reviewer comments will be addressed prior to dissemination of the final report and publication of the final rule.

Identification of Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of the policy requiring us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA, is to increase public awareness of the effect of listings on proposed and ongoing activities within the species' range.

Section 9 of the ESA prohibits certain activities (e.g., importation, exportation, take, sale, and delivery) that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify critical habitat. Under Section 7(a)(4), Federal agencies must confer with us on any of these activities to ensure that any such activity is not likely to jeopardize the continued existence of a species proposed for listing or destroy or adversely modify proposed critical habitat. Examples of Federal actions that may affect black abalone include permits and authorizations relating to coastal

development and habitat alteration, oil and gas development, military operations, coastal power plant operations, toxic waste and other pollutant discharges, and aquaculture operations. Sections 10(a)(1)(A) and (B) of the ESA authorize NMFS to grant exceptions to the ESA's Section 9 take prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. Activities potentially requiring a section 10(a)(1)(A) research/enhancement permit if black abalone are listed include scientific research that targets black abalone. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, provided that the requirements of section 10(a)(2) are met.

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (16 U.S.C. 1532(3)). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 1533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species. We are currently considering a proposal to designate critical habitat for black abalone, but at this time a designation is not determinable because: (1) we currently lack information sufficient to perform required analyses of the impacts of the designation; and (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Thus, we are seeking public input to assist in gathering and analyzing the best available scientific data and other information to support a critical habitat designation, which will be proposed in a subsequent **Federal Register** notice. We will continue to meet with co-managers and other stakeholders to review this information and the overall designation process.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at section 50 CFR 424.12(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection'' (hereafter also referred to as ''essential features''). Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features ''may include, but are not limited to, the following: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

Public Comments Solicited

We have exercised our best professional judgment in developing this proposal to list black abalone. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we are soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties (See **DATES** and **ADDRESSES**). Specifically, we are interested in information regarding: (1) status of black abalone populations in the northern part of the range (north of Monterey County) and in Baja California, Mexico; (2) current or planned activities within the range of black abalone and their possible impact on the species; and (3) efforts being made to protect black abalone.

We are also requesting quantitative evaluations describing the quality and extent of marine habitats for juvenile and adult black abalone as well as information on areas that may qualify as critical habitat for black abalone in California. Areas that include the physical and biological features essential to the recovery of the species should be identified. We recognize that there are areas within the proposed boundaries of black abalone that historically contained black abalone habitat, but may not be currently occupied by black abalone. For areas potentially qualifying as critical habitat, we are requesting information describing: (1) the activities that affect the area or could be affected by the designation; and (2) the economic costs and benefits of additional requirements or management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ''of the [critical habitat] designation upon proposed or ongoing activities'' (50 CFR 424.19). Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the take prohibitions under section 9 of the ESA. Where possible, comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

We will review all public comments and any additional information regarding the status of, and critical habitat for, black abalone in developing a final listing determination and a proposed critical habitat designation.

Public Hearings

If requested by the public by February 25, 2008, hearings will be held in several locations within the range of black abalone. If hearings are requested, details regarding locations, dates, and times will be published in a forthcoming **Federal Register** notice.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (See NOAA Administrative Order 216-6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, who will be invited to comment. NMFS has conferred with the State of California in the course of assessing the status of black abalone and considered, among other things, Federal, state and local conservation measures. As the process continues, we intend to continue engaging in informal and formal contacts with the States, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: January 4, 2008.

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 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation of part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (d) is revised to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(d) *Marine invertebrates.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species[1]		Where Listed	Citation (s) for Listing Determinations	Citations (s) for Critical Habitat Designations
Common name	Scientific name			
Black abalone	*Haliotis cracherodii.*	USA, CA. From Crescent City, California, USA to Cape San Lucas, Baja California, Mexico, including all offshore islands..	[FR CITATION WHEN PUBLISHED AS A FINAL RULE].	N/A.
White abalone	*Haliotis sorenseni.*	USA, CA. From Point Conception, California to Punta Abreojos, Baja California, Mexico including all offshore islands and banks..	NOAA 2001; 66 FR 29054, May, 29, 2001..	Deemed not prudent NOAA 2001; 66 FR 29054, May, 29, 2001..

[FR Doc. E8–335 Filed 1–10–08; 8:45 am]

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Notices

Federal Register

Vol. 73, No. 8

Friday, January 11, 2008

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

Submission for OMB Review; Comment Request

January 7, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Regulations Governing Inspection and Certification of Processed Fruits and Vegetable and Related Products—7 CFR 52.

OMB Control Number: 0581–0123.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h) requires and directs the Department of Agriculture to promulgate rules and regulations to carry out voluntary inspection and grading services of processed fruits and vegetables on a fee for service basis. The Regulations Governing Inspection and Certification of Processed Fruit and Vegetables and Related Products (7 CFR part 52) authorizes the collection of information to assure that the products sampled, inspected, graded and certified are actually the products requested to be sampled and inspected.

Need and Use of the Information: The Agricultural Marketing Service (AMS) uses the data collected for grading and certification purposes and for hiring licensed samplers. The following forms are used by AMS for information collection: FV–159, *Application for Inspection of Unofficially Submitted Samples of Food Products,* the information collected is used to determine the purpose for which the inspection is desired for unofficially submitted samples. FV–356, *Application for Inspection and Certificate of Sampling,* the information is used to fill in the respondent's name and address, and to describe the containers, the location code marks and the number of containers in the lot. FV–468, *Application for License to Sample Processed Foods,* the information collected is used to hire prospective employees desiring to become licensed to sample processed foods and to certify as to the identification, location, kinds and condition of containers of processed products that are sampled.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,406.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 642.

Agricultural Marketing Service

Title: Organic Assessment Exemption under Commodity Research and Promotion Programs.

OMB Control Number: 0581–0217.

Summary of Collection: Under the 2002 Farm Bill, Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002. The FAIR Act amendment covers research and promotion programs established under the Commodity Promotion, Research, and Information Act of 1996 or freestanding legislation. Any person that produces and markets solely 100 percent organic products, and does not produce any conventional or non-organic products, is exempt from paying assessments.

Need and Use of the Information: To be exempt from paying assessments, applicants must submit form AMS–15 to the applicable board or council prior to or during the initial applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. The information collected will include name, company name, address, type of operation, list of commodities produced, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 2,465.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,233.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–309 Filed 1–10–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 8, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Control Number: 0575–0158.

Summary of Collection: 7 CFR 1902–A, Supervised Bank Accounts, prescribes the policies and procedures for disbursing loan and grant funds, establishing and closing supervised accounts, and placing Multi-Family housing reserve accounts in supervised accounts. Supervised accounts are accounts with a financial institution in the names of a borrower and the United States Government, represented by Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, or Farm Service Agency (Agency). Section 339 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1989 and Section 510 of the Housing Act of 1949, 42 U.S.C. 1480 are the legislative authority requiring the use of supervised accounts.

Need and Use of the Information: The agency's state and field offices will collect information from borrowers and financial institutions and use the information to monitor compliance with agency regulations governing supervised accounts, such as establishing, maintaining, and withdrawing funds. In addition, the information will be used to ensure that the borrowers operate on a sound basis and use the loan and grant funds for authorized purposes.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 26,953.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–322 Filed 1–10–08; 8:45 am]

BILLING CODE 3410—XT;P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0047]

Codex Alimentarius Commission: Meeting of the Codex Committee on Natural Mineral Waters

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on January 16, 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 Natural Mineral Waters (CCNMW) of the Codex Alimentarius Commission (Codex), which will be held in Lugano, Switzerland on February 11–15, 2008.

The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 8th Session of the CCNMW and to address items that will be on the agenda.

DATES: The public meeting is scheduled for Wednesday, January 16, 2008, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 1A001, FDA, Center for Food Safety and Applied Nutrition (CFSAN), Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740. Codex documents related to the 8th Session of the CCNMW will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The Acting U.S. Delegate to the CCNMW, Dr. Henry Kim, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *henry.kim@fda.hhs.gov.*

Registration: Register electronically to the same e-mail address above. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number, if known, when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems.

FOR FURTHER INFORMATION ABOUT THE 8TH SESSION OF THE CCNMW CONTACT: Henry Kim, Acting U.S. Delegate to the CCNMW, Office of Food Safety, CFSAN, FDA, 5100 Paint Branch Parkway (HFS–317), College Park, MD 20740, Phone: (301) 436–2023, Fax: (301) 436–2651, e-mail: *henry.kim@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Edith Kennard, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–5261, Fax: (202) 720–3157, e-mail: *edith.kennard@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Natural Mineral Waters (CCNMW) was established by the Commission as a regional Codex Committee, but has since been allocated the task of elaborating worldwide standards for natural mineral waters and bottled (packaged) water other than natural

mineral water. The Committee is hosted by Switzerland.

Issues To Be Discussed at the Public Meeting

The following items will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex Alimentarius Commission and Other Codex Committees.
- Consideration of the Health-Related Limits for Certain Substances in the Codex Standard on Natural Mineral Waters (CODEX STAN 108–1981).
- Substances listed as having discrepancies that exist between the Codex Standard and the WHO Guidelines for Drinking Water Quality, 3rd edition (guideline values for chemicals of health significance).
- Discrepancies between the Codex Standards and WHO Guidelines exist for

—Antimony
—Borate
—Copper
—Manganese
—Nitrite
—Mercury
—Nickel

Each item listed above will be fully described in documents distributed, or to be distributed, by the Swiss Secretariat prior to the February 11–15, 2008 meeting in Lugano, Switzerland. Members of the public may access copies of these documents at *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the January 16, 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 Acting U.S. Delegate for the 8th Session of the CCNMW, Dr. Henry Kim, at *henry.kim@fda.hhs.gov.* Written comments should state that they relate to activities of the 8th Session of the CCNMW.

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/2008_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 the Listserv and 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 January 7, 2008.

Paulo Almeida,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E8–310 Filed 1–10–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nebraska Travel Management Rule Implementation Project; Nebraska National Forest, Nebraska and South Dakota

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to Prepare Environmental Impact Statement.

SUMMARY: The purpose of the Nebraska Travel Management Rule Implementation project is to implement direction in the *Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule,* (36 CFR Parts 212, 251, 261, 295) commonly known as the Travel Management Rule and designate roads, trails, and areas open to motor vehicle use.

The Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of proposed land management activities, and corresponding alternatives, within the Nebraska Travel Management Project area. The Nebraska Travel Management Rule Implementation project area is located primarily on National Forest System lands, administered by the Nebraska National Forest in northwestern Nebraska and southwestern South Dakota.

DATES: Comments concerning the proposed land management activities should be received within 30 days following publication of this notice to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments concerning the proposed land management activities or requests to be placed on the project mailing list to: Mark Reichert, Project Leader; Attention: Nebraska Travel Management Project, ACT2 Enterprise Unit, 1312 Fairlane Road, Yreka, California 96097–9549. You are welcome and encouraged to submit electronic comments in acceptable formats [plain text (.txt), rich text (.rtf) or Word (.doc)] to: *mreichert@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Mark Reichert, Project Leader, ACT2 Enterprise Unit, 1312 Fairlane Road, Yreka, California 96097–9549, phone (530) 841–4422, e-mail: *mreichert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by proposed land management activities. Information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in or affected by the project, are encouraged to obtain additional information from the contact identified in the previous section titles: **FOR FURTHER INFORMATION CONTACT**.

Proposed Action—Proposed land management activities (Proposed Action) include the following, with approximate mileage and acreage values: (1) Designation of 552 miles of motorized travel, which includes 514 miles of roads (303 miles for both Highway Legal Vehicles (HLV) and Off-Highway Legal Vehicles (OHV) use, and 211 miles for HLV use only) and 38 miles of trails for OHV use (2) Designation of 5,441 acres of motorized travel.

Project History—On November 2, 2005, the Forest Service announced the *Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule* governing OHV and other motor vehicle use on national forests and grasslands. Commonly known as National Travel Management Rule, it directs all national forests and national grasslands to allow wheeled motorized vehicle travel only on designated roads,

trails, and areas. This changes OHV rules on national forests to a ''closed unless designated open'' policy. In January of 2008, the Nebraska Travel Management Route Implementation Project is being presented to the public for comment (scoping) prior to undertaking preparation of an Environmental Impact Statement.

Responsible Officials—Four District Rangers of the Nebraska National Forest, Patti Barney, for the Bessey District Ranger, Michael McNeill, for the Fall River District Ranger, Charlie Marsh, for the Pine Ridge District Ranger, Kevin Atchley, for the Wall District Ranger, will serve in the capacity of responsible officials throughout this process. These Responsible Officials will be making project-level decisions from the project.

Decision Space—Decision-making will be limited to specific activities relating to the Proposed Action. The primary decision to be made will be whether or not to implement the Proposed Action or another alternative that responds to the project's purpose and needs.

Preliminary Issues—Comments from American Indian tribes, the public, and other agencies will be considered in identifying preliminary issues. Issues raised in similar projects have included: effects on hunting, recreation, and conflicts between different user groups.

Public Participation—The Forest Service is seeking comments from Federal, State, and local agencies, as well as local Native American tribes and other individuals or organizations that may be interested in or affected by the Proposed Action. Comments received in response to this notice will become a matter of public record. While public participation is welcome at any time, comments on the Proposed Action received within 30 days of this notice will be especially useful in the preparation of the draft EIS. Timely comments will be used to identify: Potential issues with the Proposed Action, development of alternatives to the Proposed Action that respond to identified needs and significant issues, and potential environmental effects of the Proposed Action and alternatives considered in detail. In addition, the public is encouraged to contact and/or visit Forest Service officials at any time during the planning process.

Estimated Dates for Filing—The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in August 2008. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. Comments received on the draft EIS will be used in preparation of the final EIS, expected in January 2009. Four different Record of Decisions (RODs) will also be issued at that time, one for each Ranger District, along with publication of a Notice of Availability of the final EIS and RODs in the **Federal Register**.

Reviewer's Obligations to Comment—The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal in such a way that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S.C. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986), and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period of the draft EIS in order that comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 18, 2007.

Don Bright,

Forest Supervisor, Nebraska National Forest, 125 North Main, Chadron, NE 69337.

[FR Doc. 08–80 Filed 1–10–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

ACTION: Proposed Addition to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and services previously furnished by such agencies.

Comments Must be Received on or Before: February 10, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Warehousing & Distribution of the IRS Incentive

Awards for the BRAVO! Awards Program, Internal Revenue Service Business Operations Offices, 333 Market Street, San Francisco, CA.
NPA: Bobby Dodd Institute, Inc., Atlanta, GA.
Contracting Activity: Department of the Treasury, Internal Revenue Service, San Francisco, CA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for deletion from the Procurement List:

Product

Cover, Map
NSN: 8460–00–287–2137.
NSN: 8460–00–287–2140.
NPA: Goodwill Industries of the Valleys, Inc., Roanoke, VA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Janitorial/Custodial Federal Aviation Administration Facilities, Albany County Airport, Albany, NY.
NPA: Albany County Chapter, NYSARC, Inc., Albany, NY.
Contracting Activity: Federal Aviation Administration, John F. Kennedy International Airport, Jamaica, NY.
Service Type/Location: Janitorial/Mechanical Maintenance, U.S. Federal Building, U.S. Post Office, 403 West Lewis Street, Pasco, WA.
NPA: Columbia Industries, Kennewick, WA.
Contracting Activity: General Services Administration, Public Buildings Service, Region 10.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E8–345 Filed 1–10–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Notice of Amended Final Results of Antidumping Duty Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION: On November 1, 2007, the Department of Commerce (the Department) published the final results of changed-circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. See *Final Results of Antidumping Duty Change-Circumstances Review: Gray Portland Cement and Clinker from Mexico*, 72 FR 61863 (November 1, 2007) (*Changed-Circumstances Review Final Results*). The review covers one manufacturer/exporter, Holcim Apasco, S.A. de C.V., and Cementos Apasco, S.A. de C.V. (collectively Apasco). The changed-circumstances review covers exports of subject merchandise to the United States during the period October 1, 2006, through December 31, 2006. On November 6, 2007, Apasco filed a request for NAFTA panel review of the *Changed-Circumstances Review Final Results*. On December 19, 2007, the Department and Apasco settled the changed-circumstances review. On December 31, 2007, the NAFTA Secretariat terminated the litigation in accordance with the parties' consent.

Assessment of Duties

Having a final and conclusive resolution of the contested changed-circumstances review, we are now amending the final results of the changed-circumstances review of the antidumping duty order on Mexican cement to reflect the terms of the settlement agreement. Consequently, we determine that the per-unit amount to be assessed on all entries of Mexican cement during the period of the contested changed-circumstances review which were produced by Apasco is $3.00 per metric ton. Accordingly, the Department will instruct U.S. Customs and Border Protection (CBP) to assess appropriate antidumping duties on the affected entries of the subject merchandise during the contested review period. The Department will issue assessment instructions to CBP within 41 days of publication of this notice.

Cash-Deposit Requirements

As provided by section 751(a)(1) of the Tariff Act of 1930, as amended, and as stipulated in the settlement agreement, the cash-deposit rate for all shipments of Mexican cement produced or exported by Apasco entered, or withdrawn from warehouse, for consumption after the effective date of this notice shall be at the rate of three U.S. dollars ($3.00) per metric ton. The deposit requirements shall remain in effect until further notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 7, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8–334 Filed 1–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone: (202) 482–6905 or (202) 482–1394, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On September 10, 2007, the Department of Commerce (''Department'') initiated an antidumping duty investigation of steel wire garment hangers from the People's Republic of China. *See Steel Wire Garment Hangers from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 72 FR 52855 (September 17, 2007) (''*Initiation Notice*''). The *Initiation Notice* stated that we would issue our preliminary determination no later than 140 days after the date of initiation. Currently, the preliminary determination in this investigation is due on January 28, 2007.[1]

On December 31, 2007, M&B Metal Products, the petitioner, made a timely request, pursuant to 19 CFR 351.205(e), for a 50-day postponement of the preliminary determination in the investigation, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). The petitioner stated that a postponement of the preliminary determination is necessary because of the complexities of the investigation, and because the Department is still involved in gathering initial data from the respondents.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, for the reasons identified by the petitioner and because there are no compelling reasons to deny their request, the Department is postponing the preliminary determination in this investigation until March 18, 2008, which is 190 days from the date on which the Department initiated these investigations.[2] The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR351.205(f)(1).

Dated: January 7, 2008.

David A. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–333 Filed 1–10–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] 140 days from the initiation is actually January 27, 2008. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005).

[2] 190 days from the initiation date is actually March 17, 2008. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See id.*

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 07–068.

Applicant: University of Utah, Salt Lake City, UT 84112.

Instrument: Electron Microscope, Model Nova NanoSEM 430.

Manufacturer: FEI Company, Czech Republic.

Intended Use: See notice at 72 FR 71360, December 17, 2007.

Docket Number: 07–069.

Applicant: The Children's Hospital, Denver CO 80218.

Instrument: Electron Microscope, Model H–7650.

Manufacturer: Hitachi High-Technologies Corporation, Japan.

Intended Use: See notice at 72 FR 71360, December 17, 2007.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: January 8, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–332 Filed 1–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE93

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 Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Monday, January 28, 2008 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, January 29 through Friday, February 1, from 8:30 a.m. until business for each day is completed.

ADDRESSES: The GMT meeting will be held at the Pacific Fishery Management Council office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT working meeting is to (1) develop models and recommendations for analyzing harvest specifications and management measures for 2009–2010 West Coast groundfish fisheries; (2) develop a new bycatch model for analyzing potential impacts in 2008 Pacific whiting fisheries; (3) provide guidance on analyzing intersector allocation alternatives for groundfish species and complexes; and (4) develop recommendations for analyzing a range of alternatives for a contemplated limited entry system for open access groundfish fisheries. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be

development of the environmental analyses for 2009–10 groundfish harvest specifications and management measures and recommendations for consideration by the Council at its March meeting in Sacramento, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed 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 GMT'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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 8, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–336 Filed 1–10–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Native American Tribal Insignia Database.

Form Number(s): None.

Agency Approval Number: 0651–0048.

Type of Request: Revision of a currently approved collection.

Burden: 3 hours annually.

Number of Respondents: 15 responses per year.

Avg. Hours per Response: The USPTO estimates that a recognized Native American tribe will require an average of 10 to 12 minutes (0.17 to 0.20 hours) to complete a request to record an official insignia, including preparing the appropriate documents and submitting the completed request.

Needs and Uses: The Trademark Law Treaty Implementation Act (Pub. L. 105–330, § 302, 112 Stat. 3071 (1998)) required the USPTO to study issues surrounding the protection of the official insignia of federally- and state-recognized Native American tribes under trademark law. At the direction of Congress, the USPTO created a database containing the official insignia of recognized Native American tribes. The insignia database serves as a reference for examining attorneys when determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* This information collection is used by the USPTO to enter an official insignia submitted by a federally- or state-recognized Native American tribe into the database. There are no forms associated with this collection.

Affected Public: Tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0048 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 11, 2008 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: January 4, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–327 Filed 1–10–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–22 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: January 7, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JAN 03 2008
In reply refer to:
I-07/014193-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-22, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $328 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Kuwait

(ii) **Total Estimated Value:**

Major Defense Equipment*	$323 million
Other	$ 5 million
TOTAL	$328 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 2,106 TOW-2A Radio Frequency missiles, 21 Buy-to-Fly missiles, 1,404 TOW-2B Radio Frequency missiles, 14 Buy-to-Fly missiles, containers, spare and repair parts, supply support, publications and technical data, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

(iv) **Military Department:** Army (ULA, Amd #1)

(v) **Prior Related Cases, if any:**
FMS Case ULA - $17 million – 29Dec05
FMS Case UJW - $28 million - 21Aug95

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** see attached Annex

(viii) **Date Report Delivered to Congress:** JAN 03 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - TOW-2A/B Radio Frequency Missiles

The Government of Kuwait has requested a possible sale of 2,106 TOW-2A Radio Frequency missiles, 21 Buy-to-Fly missiles, 1,404 TOW-2B Radio Frequency missiles, 14 Buy-to-Fly missiles, containers, spare and repair parts, supply support, publications and technical data, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $328 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO ally which has been, and continues to be, an important force for political stability and economic progress in the Middle East. Additionally, the proposed sale will demonstrate the U.S. Government's commitment to our bilateral relationship.

The proposed sale of additional TOW-2 missiles will fill an urgent requirement to enhance the reliability of Kuwait's TOW missile stock as its stocks of existing TOW missiles are nearing the end of their shelf life. The additional Buy-to-Fly missiles will be purchased for test purposes. Kuwait, which already has TOW-2 missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Raytheon Corporation of Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW-2 Weapon System hardware and documentation provided with this proposed sale are Unclassified; however, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs, which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development.

2. The Radio Frequency (RF) TOW-2A configuration is the direct attack version of the TOW family of missiles capable of defeating modern threat targets. It consists of a single main warhead and a standoff probe. The probe contains a precursor charge that detonates upon contact with the target for pre-emptive removal of reactive armor. The main charge is detonated by a subsequent timed interval or by contact with the target.

3. The RF TOW-2B configuration is the top attack version of the TOW family of missiles capable of defeating modern threat targets. The TOW-2B warhead consists of dual Explosively Formed Penetrators (EFP) designed to fire downward over the top of the target thus penetrating the target with catastrophic results.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 08–74 Filed 1–10–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Defense Advisory Board for Employer Support of the Guard and Reserve (DAB–ESGR)

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DAB–ESGR. This meeting will focus on the status of DoD actions and recommendations from previous DAB meetings, and discussion of the board's mission and future goals. This meeting is open to the public.

DATES: 0830–1645 hrs, 22 January 2008.

Location: Ballroom, Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Interested attendees may contact MAJ Elaine M. Gullotta at 703–696–1385 ext 540, or e-mail at *elaine.gullotta@osd.mil.*

Agenda

0830 Convene, Role of the Board and Rotation of Members (Mr. James G. Rebholz, Chairman).

0930 Role of the Designated Federal Official (Mr. Dave Patel, Designated Federal Officer).

0945 Ethics Brief, Financial Disclosure Documentation, Standards of Conduct Attorney.

1045 Break.

1100 Honorable Thomas F. Hall, Assistant Secretary of Defense Reserve Affairs.
1200 Lunch.
1300 Vice Admiral John G. Cotton, Chief of Navy Reserve, Commander, Navy Reserve Force.
1430 Board Discussion (Read Ahead documents/Communication Feedback) Due Outs—Subcommittee tasks.
1530 Break.
1545 Summary of Proceedings, FY08 meeting dates.
1630 Administrative Announcements (MAJ Elaine Gullotta, ESGR DAB Action Officer).
1645 Adjourn.

SUPPLEMENTARY INFORMATION: Due to scheduling difficulties the Defense Advisory Board for Employer Support of the Guard and Reserve was unable to finalize its agenda in time to publish notice of its meeting in the **Federal Register** for the 15-calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: January 7, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 08–87 Filed 1–10–08; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB)

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting:

Name of Committee: Reserve Forces Policy Board (RFPB).

Date: January 29–30, 2008.

Time: (29th) 8 a.m.–4:30 p.m.; (30th) 8 a.m.–3 p.m.

Location: Meeting address (29th) Maryland Emergency Management Agency, Camp Fretterd Military Reservation, 5401 Rue Saint Lo Drive, Reisterstown, MD 21136; (30th) Baltimore Marriott Inner Harbor Hotel at Camden Yards, 110 South Eutaw St., Baltimore, MD 21201. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Purpose of the Meeting: An open quarterly meeting of the Reserve Forces Policy Board.

Agenda: Discussion of homeland security and other issues relevant to the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. To request a seat, contact the DFO in advance at 703–697–4486, or by e-mail, *marjorie.davis@osd.mil* and/or *donald.ahern@osd.mil*.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*''

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

FOR FURTHER INFORMATION CONTACT: Col Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil*. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Dated: January 4, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–381 Filed 1–10–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Polymer-Template Complex Produced by Enzymatic Polymerization

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,309,582 entitled ''Polymer-Template Complex Produced by Enzymatic Polymerization'' issued December 18, 2007. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4184 or E-mail: *Jeffrey.Ditullio@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison.

[FR Doc. E8–369 Filed 1–10–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement for Widening of the Freeport Ship Channel in Freeport, Brazoria County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District announces the release of the Final Environmental Impact Statement (FEIS) and the public comment period, and the availability of the Final General Conformity Determination for the Brazos River Harbor Navigation District's (Port of Freeport) proposed widening of the Freeport Harbor Ship Channel.

DATES: The USACE Galveston District will be accepting written public comments on the FEIS through February 11, 2008. All comments must be postmarked by February 11, 2008.

ADDRESSES: You may send written comments to the USACE, Galveston

District, Attn: Sam Watson, P.O. Box 1229, Galveston, TX 77553–1229.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS can be answered by Mr. Sam Watson, (409) 766–3946.

SUPPLEMENTARY INFORMATION:

Authority: This Federal Action is in consideration of a Department of the Army Permit application for work under section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C.403), section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 103 of the Marine Protection and Sanctuaries Act (MPRSA) (33 U.S.C. 1413).

Background: In April 2005, Port of Freeport submitted a Department of Army Permit Application to widen portions of the Freeport Harbor Jetty Channel and all of the Freeport Harbor Entrance Channel from 400 feet (ft) to 600 ft. It was determined that an Environmental Impact Statement would be required for the proposed project. Since the November 29, 2005 Scoping Meeting, the consulting firm of PBS&J, under the direction of the Galveston District, U.S. Army Corps of Engineers (USACE), prepared Draft and Final Environmental Impact Statements for the proposed project. The DEIS was made available for a 60-day comment period on November 9, 2006. A public hearing and workshop was held December 6, 2006 in Freeport, Texas. Comments received during the comment period and at the public hearing have been considered in the evaluation of the project and incorporated into the FEIS. The FEIS is now available for public review and comment.

Project Description: Port of Freeport proposes to widen portions of the Freeport Ship Channel. The project includes widening the Freeport Harbor Jetty Channel beginning at Channel Station 63+35 with a gradual widening, at the authorized depth, up to an additional 150 feet (ft) for about 1,835 ft to Channel Station 45+00. From that point to Channel Station 40+00 the widening would be less gradual from the additional 150 ft to an additional 200 ft. Through the rest of the Jetty Channel and to the end of the Freeport Harbor Entrance Channel (Channel Station −260+00), the channel would be widened an additional 200 ft. The length of channel proposed for widening is about 6.1 miles, of which 5.7 miles would be widened by 200 ft. The project depth will remain the same at 45 ft in the Jetty Channel and 47 ft in the Entrance Channel. The widening would generate approximately 3.2 million cubic yards (mcy) of new dredged material. Approximately 2.9 mcy of the new work material would consist of clay material and about 300,000 cubic yards (cy) would consist of silty/sand material. If approved by EPA and by USACE under section 102 and 103 of MPRSA, an ocean dredged material disposal site (ODMDS) previously designated as a one-time use site would be redesignated for placement of the 2.9 mcy of clay/silt material. The 300,000 cy of silty/sand material would be used beneficially and placed on Quintana Beach in front of the Seaway upland confined placement area (UPCA). The beach on either side of this location has been enhanced through Texas General Land Office (GLO) or other programs, but no material was placed in front of the Seaway UPCA. Placement of the material in this location would provide some protection from erosion for the Seaway UPCA, which is an active placement area that has not been used for approximately 6 years because of concerns regarding erosion of the beachfront levee.

Availability of Final Environmental Impact Statement (FEIS): Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended and as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508) a FEIS for the proposed Freeport Channel Widening has been filed with the EPA and is being made available to Federal, State, and local agencies and all interested parties. The FEIS can be viewed at *http://www.swg.usace.army.mil/reg/pn.asp.* Copies of the FEIS are available by contacting Mr. Sam Watson. In addition, copies of the FEIS are available for viewing at the following libraries:

Brazoria County Library System, Catherine H. Threadgill, County Librarian, 451 N Velasco, Angleton, TX 77515.

Brazoria Library, Jerry Measells, Librarian, 620 S. Brooks, Brazoria, TX 77422 .

Clute Library, Carolyn Weatherly, Librarian, 215 N. Shanks, Clute, TX 77531 .

Freeport Library, Marge Janke, Librarian, 410 Brazosport Blvd., Freeport, TX 77541.

Lake Jackson Library, Nancy Hackney, 250 Circle Way, Lake Jackson, TX 77566.

Final General Conformity Review: Pursuant to section 176 of the Clean Air Act Amendments (CAAA) of 1990, a Final General Conformity Determination has been filed with the EPA and Texas Commission on Environmental Quality (TCEQ) and is being made available to Federal, State and local air quality agencies and all interested parties for the proposed Freeport Channel Widening. Copies of the Final General Conformity Determination are available by contacting Mr. Sam Watson. In addition, copies of the Final General Conformity Determination (Appendix G to the FEIS) are available for viewing, along with the FEIS, at the libraries listed above.

Section 102/103: The Environmental Protection Agency (EPA) is charged with developing ocean dumping criteria to be used in evaluating permit applications under section 102(a) of the Marine Protection, Research, and Sanctuaries Act (MPRSA). Section 103 of MPRSA authorizes USACE to permit the placement of dredged material within an ODMDS, subject to EPA concurrence and use of EPA's dumping criteria. For the proposed widening project, USACE would authorize the continued use of the maintenance material ODMDS and the one-time placement of new work material in a previously designated site under section 103, pending EPA concurrence that the criteria continue to be met and that analysis meets EPA guidelines. Additional information regarding the Section 103 authorization is included in the FEIS (primarily in Appendix C).

Other Agency Authorizations: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program. In January 2007 the Coastal Coordination Council provided a letter noting that the proposed action is consistent with the Texas Coastal Management Program goals and policies (Appendix I).

National Register of Historic Places: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic resources and the effects of the proposed project upon these properties: A remote sensing survey of the Freeport Harbor Channel was performed by PBS&J in March and April, 2005 and a close-order survey was performed in February 2006. A total of eleven anomalies having potential historic significance were located in areas of potential impact during the initial inventory. Six of those anomalies were identified as areas that were of potential historic significance during the second inventory. Because these six anomalies occur within areas that would be impacted by bottom disturbing activities, they were surveyed by diving

and/or probing to confirm whether or not they are significant archeological sites. None of the anomalies was identified as a cultural resource. In March 2007 the State Historic Preservation Officer (SHPO) concurred that no further investigation was needed on the areas cleared by diving and that the proposed action may proceed (Appendix E).

Threatened and Endangered Species: A Biological Assessment was prepared and was presented to U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) in the DEIS. Consultation with FWS regarding nesting sea turtles and piping plover was completed informally. NMFS has reviewed the Biological Assessment (BA) and has prepared a Biological Opinion (BO) outlining the measures to be taken to avoid and minimize potential sea turtle takes, particularly during hopper dredging activities. NMFS' finding was that the proposed action is likely to adversely affect but is not likely to jeopardize the continued existence of loggerhead, hawksbill, leatherback, Kemp's ridley, or green sea turtles.

Essential Fish Habitat: Consultation for Essential Fish Habitat of the Magnuson-Stevens Fishery Conservation and Management Act was initiated in November 2005 via the workshop prior to the public scoping meeting. Letters were also sent to the NMFS in February and May, 2006. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat (EFH) or Federally managed fisheries in the Gulf of Mexico. NMFS has reviewed the analysis provided in the DEIS and concurred with the finding that the proposed placement of dredged material will not significantly affect EFH and that no further consultation is required (Appendix I).

Public Interest Review Factors: The application will be reviewed in accordance with 33 CFR 320–330, the Regulatory Programs of USACE, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against reasonably foreseeable detriments associated with the proposal. All factors which may be relevant to the proposal will be considered. These include, but are not limited to: dredged material management, air quality, shoreline erosion, economics, general environmental concerns, historic resources, protected species, navigation, recreation, water and sediment quality, energy needs, safety, hazardous materials, and, in general, the welfare of the people.

Solicitation of Comments: USACE is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments will be considered in the evaluation of impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of the Record of Decision pursuant to NEPA. Comments are also used to determine the overall public interest of the proposed activity.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–377 Filed 1–10–08; 8:45 am]

BILLING CODE 3710–52–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Feasibility Study and Environmental Impact Statement for Modification of the Coos Bay Navigational Channel, Coos County, OR

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Portland District will be the lead agency for a combined Draft Feasibility Study/Environmental Impact Statement (FS/EIS) for Coos Bay Channel Modifications in Coos County, Oregon. The FS/EIS is being prepared by the Oregon International Port of Coos Bay (Port) under the authority granted by section 203 of the Water Resources Development Act (WRDA) of 1986.

DATES: All parties are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. A public scoping meeting will be held on Thursday, January 24, 2008, from 4–8 p.m. at the City of North Bend Community Center, 222 Broadway Street, North Bend, OR 97459. In addition, written comments will also be accepted until February 15, 2008, at the address listed below or at the project Web site: *http://www.CoosBayChannelEIS.com.* The Corps expects the Draft FS/EIS to be made available to the public in March 2009. A public hearing will be held during the public comment period for the Draft FS/EIS.

ADDRESSES: U.S. Army Corps of Engineers, Programs and Project Management Division, Planning Branch, P.O. 2946, Portland, OR 97208–2946.

FOR FUTHER INFORMATION CONTACT: Mr. Eric Bluhm, who can be reached by telephone at (503) 808–4759, by fax at (503) 808–4736, or by e-mail at *eric.v.bluhm@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The project site is in Coos Bay, located on the central/south coast of Oregon. The Coos Bay Federal Navigation Project was originally authorized by the River and Harbor Act of March 1879. The Federal Navigation Project was last modified by the Corps in 1997, with a channel configuration of approximately 37 feet deep and 300 feet wide from the ocean inlet to a railroad bridge at River Mile (RM) 9.2, and continuing at 400 feet wide upstream to RM 15.0.

2. *Proposed Action.* The proposed Federal actions are to modify the Coos Bay Navigational Channel from the entrance at the Pacific Ocean to the railroad bridge located at approximately river mile (RM) 9.2 and to provide ecosystem restoration in the vicinity of Coos Bay. The channel would be deepened and widened to accommodate large container vessels, and a vessel turning basin would be added for vessel maneuvering. Maintenance dredging of the channel and inlet, and possible modifications to the jetties would also be part of the Federal proposed action. Dredged material could be disposed at a variety of locations including ocean, nearshore, and at the shoreline.

Other, non-Federal but inter-dependent and inter-related actions proposed by the Port include developing an inter-modal container terminal on the North Spit of Coos Bay and making improvements to the railway corridor from the North Spit to Eugene, Oregon to transport goods off-loaded from container vessels.

3. *Purpose of and Need for the Project.* The purposes of the proposed Federal action are: (1) To respond to growing needs for capacity for large

container vessels at ports on the West Coast of the U.S.; (2) to provide economic benefits to the national economy by accommodating large container vessels, thereby reducing costs of transporting goods among Pacific Rim countries and maintaining U.S. competitiveness in the global marketplace; (3) to improve security for international movement of goods by developing an additional facility for large container vessels in a new location on the U.S. West Coast; (4) to improve safety and efficiency of navigation in the Coos Bay Navigational Channel by providing a larger area for vessel handling and maneuvering; and (5) to have a net beneficial effect on the estuarine ecosystem in the vicinity of Coos Bay.

The project is needed to accommodate large container vessels, which are used by Pacific Rim shippers transporting a wide variety of consumer goods as well as import production commodities for manufacturing firms, and U.S. produced goods for export. The volume of container traffic has increased significantly during the past ten years, and growth is expected to remain strong. Ocean carriers are responding to the growth opportunities by using larger and larger vessels. Currently, the average vessel calling at U.S. West Coast ports carries 6,500 TEUs (20-foot equivalent units), but vessels capable of carrying 12,000 TEUs are becoming more common. The larger vessels can transport containers more efficiently and at lower costs than smaller vessels. For navigation safety, a navigational channel should be at least 10 percent deeper than the draft of the largest vessels that utilize the channel, as well as wide enough to allow safe vessel maneuvering. Existing Coos Bay port facilities are not accessible to many larger ships because of depth and width limitations in the navigational channel.

In addition to deep-draft harbors, large container vessels require ports with terminals that are large enough to accommodate the containers once they are off-loaded, and that are connected to a railway system to move the containers on land. Currently, only five ports on the U.S. west coast (Los Angeles, Long Beach and Oakland, California; and Tacoma and Seattle, Washington) can accommodate these large container vessels, and additional capacity is needed. Container vessel traffic will likely exceed the capacity of existing terminals by 2015, if not sooner. In addition, should one of the existing deep-draft ports be significantly damaged (for example, by a natural disaster), it could have a major impact on the national economy. Coos Bay is geographically separated from the other deep-draft ports and, therefore, would be unlikely to be damaged by the same event affecting another major West Coast port.

Past development and resource extraction within and near Coos Bay have negatively affected the local ecosystem. Impacts have included habitat degradation and loss, declines in fish and wildlife populations, spread of invasive species, and diminished water quality, among others. Ecosystem restoration is needed to offset the effects of the proposed channel modifications and development, as well as some of the effects of past actions.

5. *Alternatives.* In addition to a no action alternative (no modifications to the Coos Bay Navigational Channel other than for maintenance) the FS/EIS will evaluate alternatives with channel depths at increments between the currently authorized 37-foot depth and a depth of 51 feet.

6. *Issues.* Numerous potential environmental issues will be addressed in the FS/EIS, and additional issues may be identified during the scoping process. Issues initially identified include:

(a) Impacts on biological resources, including species listed under Federal and State Endangered Species Acts and State sensitive species.

(b) Geological issues, including dredging and stabilization of fill areas;

(c) Impacts on water and sediment quality;

(d) Land use and planning issues;

(e) Impacts on traffic and transportation systems, including marine navigation, railroads, roads, and the Southwest Oregon Regional Airport at North Bend;

(f) Social and economic impacts;

(g) Potential noise impacts;

(h) Impacts on air quality;

(i) Impacts on public facilities and services;

(j) Impacts on visual resources;

(k) Public health and safety issues;

(l) Impacts on recreation;

(m) Cultural Resources; and

(n) Cumulative effects.

7. *Coordination.* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the Fish and Wildlife Coordination Act. Consultation will also be done with NMFS under section 305(b)(2) of the Magnuson-Stevens Act concerning Essential Fish Habitat, Marine Mammal Protection Act. Consultation will also be done with the State Historic Preservation Officer.

8. *Other Environmental Review and Consultation.* The proposed action will involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Oregon) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

Dated: December 21, 2007.

Thomas E. O'Donovan,

Col, En, Commanding.

[FR Doc. E8–367 Filed 1–10–08; 8:45 am]

BILLING CODE 3710–AR–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held January 29, 2008, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be in room 3M60/70 in the GAO building located at 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These agencies are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. The duties of the Council include, among others, soliciting, reviewing, and evaluating estuarine habitat restoration project proposals, and submitting to the Secretary of the Army a prioritized list of projects recommended for construction.

Agenda topics will include decisions on recommending additional proposals to the Secretary of the Army for funding, a brief update on projects previously recommended and funded and the recent amendments to the Estuary Restoration Act.

Security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m., January 25, 2008. We cannot guarantee access for requests received after that time. To pre-register, please contact Ellen Cummings by telephone or send an e-mail to *estuary.restoration@usace.army.mil.* When leaving a voice mail message or sending an e-mail please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the ''G'' Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 2 p.m. will be escorted to the meeting. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–374 Filed 1–10–08; 8:45 am]

BILLING CODE 3710–92–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, January 17, 2008, 10 a.m.–2 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW, Suite 150, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: Commission will receive briefings on the following: FY2008 Appropriations; EAC Standards Board, EAC Board of Advisors; EAC Technical Development Guidelines Committee; Election Data Collection Grant Program. Commissioners will consider and vote on the following: Changes to the National Voter Registration Form; Disclaimer Proposal to State Instructions Portion of the NVRA Form; EAC Organizational Chart. EAC will install new Officers for 2008. The Commission will consider other administrative matters.

This Meeting Will Be Open To The Public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 08–93 Filed 1–9–08; 12:55 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Climate Change Science Program Product Development Advisory Committee

AGENCY: Office of Science, Department of Energy

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference meeting of the Climate Change Science Program Product Development Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, January 28, 2008, 1 p.m. to 4 p.m. E.D.T.

ADDRESSES: Participants may call Ms. Karen Carlson-Brown at (301) 903–3338 to receive a call-in number by January 23, 2008. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Dr. Anjuli S. Bamzai (301–903–0294; *anjuli.bamzai@science.doe.gov*) Designated Federal Officer, Climate Change Science Program Product Development Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, Climate Change Research Division, SC–23.3/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/cpdac/announcement.html.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To continue discussions on drafting the Climate Change Science Program (CCSP) Synthesis and Assessment Product (SAP) related to climate modeling. This activity is being conducted at the request of the Department of Energy, in accordance with the CCSP Guidelines for Producing the CCSP Synthesis and Assessment Products.

Tentative Agenda:

- Discussion on how public review comments have been addressed by the SAP 3.1 author team in the current version of the report.
- Discussion on how comments from CPDAC members have been addressed by the SAP 3.1 author team in the current version of the report.
- Motion by Chair of CPDAC to seek concurrence on the draft SAP 3.1.
- Public comment (10 minute rule).

Public Participation: The teleconference 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 the items on the agenda, you should contact Anjuli Bamzai at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions 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 this meeting will be available for public review at *http://www.science.doe.gov/ober/CPDACminutes_presentations.html.*

Issued in Washington, DC, on January 7, 2008.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E8–347 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, January 29, 2008: 8 a.m. to 12 p.m.—Open Session; 12 p.m. to 1 p.m.—Lunch; and 1 p.m. to 5 p.m.—Open Session.

ADDRESSES: Crowne Plaza Houston North Greenspoint, 425 N. Sam Houston Parkway East, Houston, TX 77060.

FOR FURTHER INFORMATION CONTACT: Elena Melchert or Bill Hochheiser, U.S. Department of Energy, Office of Oil and

Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

Tentative Agenda:

7:30 a.m.–8 a.m. Registration.
8 a.m.–12 p.m. Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Update Status of the 2007 Program, Overview of 2008 Annual Plan Draft, and Overview of the National Energy Technology Laboratory Complementary Research Program.
12 p.m.–1 p.m. Lunch.
1 p.m.–4 p.m. Committee Discussions.
4 p.m.–4:30 p.m. New Business: Plans for 2008–2010 Federal Advisory Committee.
4:30 p.m.–5 p.m. Public Comments.
5 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer, the Chairman of the Committee, and a Facilitator will lead the meeting for the orderly conduct of business. 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 the items on the agenda, you should contact Elena Melchert or Bill Hochheiser at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on January 7, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–331 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES AND TIMES: February 6, 2008 at 12:15 p.m. to 5:15 p.m. February 7, 2008 at 8 a.m. to 1:30 p.m.

ADDRESSES: Crystal Gateway Marriott—Alexandria Room, 1700 Jefferson Davis Highway, Arlington, Virginia, Phone: (703) 920–3230.

FOR FURTHER INFORMATION CONTACT: Valri Lightner, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–0937 or Carolyn Clark at (410) 997–7778 * 235; E-mail: *cclark@bcs-hq.com*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on Farm Bill and Energy Act.
- Presentation on Agricultural Research Service (ARS) Biofuels Activities.
- Presentation on the Energy Science, Education and Extension Plan.
- 2008 Awards Update.
- Presentation from the Department of Energy Bioenergy Research Centers.
- Baseline Biomass Work Discussions at USDA and DOE.
- Subcommittee Report Out.
- Discussion: Approve 2008 Committee Work Plan.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202–586–0937; E-mail: *valri.lightner@ee.doe.gov* or Carolyn Clark at (410) 997–7778 * 235; E-mail: *cclark@bcs-hq.com*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at *http://www.biomass.govtools.us.*

Issued at Washington, DC, on January 7, 2008

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–364 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 30, 2008. 8 a.m. to 12 p.m.—Open Session; 12 p.m. to 1 p.m.—Lunch; and 1 p.m. to 5 p.m.—Open Session.

ADDRESSES: Crowne Plaza Houston North Greenspoint, 425 N. Sam Houston Parkway East, Houston, TX 77060.

FOR FURTHER INFORMATION CONTACT: Elena Melchert or Bill Hochheiser, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater natural gas and other petroleum resources to the Secretary of

Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

Tentative Agenda:

7:30 a.m.–8 a.m. Registration

8 a.m.–12 p.m. Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Update Status of the 2007 Program, Overview of 2008 Annual Plan Draft, and Overview of the National Energy Technology Laboratory Complementary Research Program.

12 p.m.–1 p.m. Lunch.

1 p.m.–4 p.m. Committee Discussions.

4 p.m.–4:30 p.m. New Business: Plans for 2008–2010 Federal Advisory Committee.

4:30 p.m.–5 p.m. Public Comments.

5 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer, the Chairman of the Committee, and a Facilitator will lead the meeting for the orderly conduct of business. 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 the items on the agenda, you should contact Elena Melchert or Bill Hochheiser at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on January 7, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–363 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Finding of No Significant Impact; Energy Efficient Performance Requirements for New Federal Commercial and Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Finding of no significant impact (FONSI).

SUMMARY: The Energy Conservation and Production Act (ECPA), 42 U.S.C. 6831, *et seq.* requires the Department of Energy (DOE) to establish by rule building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834(a)(1)) Section 305 of ECPA, as amended by section 109 of the Energy Policy Act of 2005 (Pub. L. No. 109–58), mandates the development of new Federal building energy efficiency standards based on the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) ASHRAE/IESNA Standard 90.1–2004 (ASHRAE 2004) (for commercial and high-rise multi-family residential buildings) and the International Code Council (ICC) International Energy Conservation Code 2004 Supplement (2004 IECC) (for low-rise residential buildings). (42 U.S.C. 6834(a)(2)) Federal buildings are required to reduce energy consumption by at least 30 percent, if life cycle cost-effective, over these baseline standards. (42 U.S.C. 6834(a)(3)(A)(i)) Based on an Environmental Assessment (EA), DOE/EA–1463, DOE has determined that the adoption of the new energy efficiency standards ''Energy Efficiency Standard for New Federal Commercial and High-Rise Multi-Family Residential Buildings'' (10 CFR Part 433) and ''Energy Efficiency Standard for New Federal Low-Rise Residential Buildings'' (10 CFR Part 435) would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, an environmental impact statement (EIS) is not required, and the Department is issuing this finding of no significant impact (FONSI).

ADDRESSES: Copies of the EA and the proposed rule are available from: U.S. Department of Energy, Office of the Federal Energy Management Program, Forrestal Building, Mail Station EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–5772.

FOR FURTHER INFORMATION CONTACT: Cyrus Nasseri, Office of the Federal Energy Management Program (EE–2L), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9138.

For Further Information Regarding the DOE NEPA Process, Contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action: The action is the establishment of revised energy efficiency requirements for new Federal commercial and multi-family high rise residential buildings and low-rise residential buildings.

Environmental Impacts: The EA evaluates the environmental impacts of five alternatives to the new standards for the design and construction of new Federal buildings. Each alternative action is presented, and the energy efficiency requirements (and hence the environmental impacts) of each alternative are compared to what would be expected to happen if no new standard were adopted, i.e., the ''no action'' alternative. In this EA, the ''no action'' alternative is the standard level under the required efficiency levels of the standards prior to amendment. The EA also examined the projected effects of standard levels mandated under section 305 of ECPA without any additional improvement in energy efficiency, i.e., the level of energy efficiency achieved under ANSI/ASHRAE/IESNA Standard 90.1–2004 (for commercial and high-rise multi-family residential buildings) or the 2004 IECC (for low-rise residential buildings). Levels of 10 percent, 20 percent, 30 percent, 40 percent and 50 percent energy savings over the minimum requirements are examined as alternatives that might be achieved by agencies attempting to meet the ''at least 30 percent savings, if life-cycle cost-effective'' provision of the requirements.

The EA also examines the environmental impacts of the final rule on building habitability (indoor environment, focusing on possible alterations to indoor air quality) and the outdoor environment (emissions of criteria pollutants and greenhouse gases). The EA finds that implementation of the final rule would

not impact building habitability (indoor air) as no change to mechanical ventilation rates or building envelope that would affect indoor air quality are being made. The EA also finds that implementation of this rule would not adversely affect minority or low-income populations, nor is the rule expected to impact wetlands, endangered species, or historic or archaeological sites.

The purpose of the final rule is to improve energy efficiency. The main environmental impact of the final rule is a reduction in emissions to the outdoor air from fossil-fueled electricity generation. The alternatives are projected to result in decreased electricity use and, therefore, a reduction in power plant emissions. The environmental analysis focuses on two criteria pollutants, nitrogen oxides (NO_X) and sulfur dioxide (SO_2), and one additional emission, carbon.

For commercial and high-rise multi-family residential buildings, at the 30 percent reduction level, carbon dioxide emissions are estimated to be reduced by 38,500 metric tons of carbon in the first year the rule is in effect, with the savings compounding in future years as more Federal construction occurs. Nitrogen oxides and sulfur dioxide emissions are estimated to be reduced by 317 and 625 tons, respectively, in the first year the rule is in effect.

For low-rise residential buildings, at the 30 percent reduction level, carbon dioxide emissions are estimated to be reduced by 763 metric tons of carbon in the first year the rule is in effect, with the savings compounding in future years as more Federal construction occurs. Nitrogen oxides and sulfur dioxide emissions are estimated be reduced by about 4 tons each in the first year the rule is in effect.

The EA was originally developed based on an interim final rule published on December 3, 2006. DOE received 20 comments on the interim final rule and made minor changes and clarifications in the Final Rule to address these comments. None of the changes or clarifications would lead to any change to the findings of the EA for the interim final rule. The EA was posted on the DOE Web site at (*http://www1.eere.energy.gov/femp/pdfs/doe_ea1463.pdf*) and received no comments. Therefore, DOE is issuing the EA developed for the interim final rule in support of the final rule.

Determination: Based upon the EA, DOE has determined that the adoption of the new building energy standards (10 CFR part 433 and 10 CFR part 435 subpart A) would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an EIS is not required.

Issued in Washington, DC, on November 1, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–324 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–8–000]

Mirant Energy Trading, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, and Mirant Potomac River, LLC v. PJM Interconnection, LLC; Order on Complaint and Setting Case for Hearing and Settlement Judge Proceedings;

January 4, 2008.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On November 8, 2007, Mirant Energy Trading, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, and Mirant Potomac River, LLC (jointly, Mirant) filed a complaint against PJM Interconnection, LLC (PJM). The complaint alleges that the default rate for the Third Incremental Auction as part of PJM's Reliability Pricing Model (RPM) is unjust and unreasonable and requests that the Commission institute a new default rate for the auction to be held January 7, 2008.

2. The Commission grants, in part, and dismisses, in part, the complaint. The Commission finds that Mirant has made a sufficient showing that the prices resulting from the RPM program's Third Incremental Auction may be unjust and unreasonable and may need to be replaced. However, as Mirant's own answer indicates, even if the existing pricing structure is found unjust and unreasonable, there is a significant dispute as to the appropriate just and reasonable replacement. The Commission therefore sets the RPM market rules relating to the Third Incremental Auction for hearing, but holds the hearing in abeyance pending settlement judge proceedings. Because this proceeding will extend beyond the auction to be held on January 7, 2008, the Commission cannot make a finding on this matter before that auction is held, and refunds would not be appropriate, the Commission dismisses Mirant's complaint with respect to that auction.

I. Background

A. RPM

1. Auction Mechanism to Set the Price of Capacity

3. As discussed extensively in prior Commission orders,[1] the Commission found that PJM's capacity market as it existed prior to RPM was unjust and unreasonable. On August 31, 2005, PJM and several of its customers filed a proposed settlement establishing the RPM market mechanism. The settlement proposed a capacity market under which capacity sellers would offer, and PJM would purchase, capacity on a multi-year forward basis through an auction mechanism, and that prices for capacity would be derived through these forward auctions.

4. Under RPM, PJM conducts multiple auctions in advance of each Delivery Year to procure capacity for that year. PJM first conducts a Base Residual Auction (BRA) three years in advance of the Delivery Year. Capacity sellers offer capacity into the BRA, and the offers create a demand curve that determines the price of capacity (absent mitigation, which will be discussed *infra*). Thus, the offers submitted into the market determine a single clearing price for all capacity (i.e., the highest-priced offer accepted by PJM sets the price for all the capacity that PJM purchases).[2]

5. After the BRA for each Delivery Year, PJM conducts three incremental auctions for that year, to enable market participants to obtain additional capacity that may be needed for that Delivery Year, either to replace previously-committed resources that have become unavailable, or to accommodate an increase in the forecasted load.[3] The Third Incremental Auction (conducted four months prior to the start of the Delivery Year) allows

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[1] *See PJM Interconnection, LLC,* 119 FERC ¶ 61,318 (2007) (June 25 Order); *PJM Interconnection, LLC,* 117 FERC ¶ 61,331 (2006) (December 22 Order) and *PJM Interconnection, LLC,* 115 FERC ¶ 61,079 at P 9–17 (2006) (April 20 Order).

[2] Additionally, the RPM mechanism provided that different locations within PJM might have different prices, if necessary to reflect the amount of capacity that must be acquired within each separate location.

[3] Mirant states (Complaint at 6–7, footnotes omitted):

The First Incremental Auction is conducted * * * 23 months prior to the start date of the Delivery Year, and allows Capacity Market Sellers that committed resources in the BRA for such Delivery Year to submit Buy Bids for replacement capacity. * * * The Second Incremental Auction is conducted only if necessary for PJM to secure additional capacity resource commitments to satisfy an increase in the projected peak load for the PJM Region. If held, the Second Incremental Auction is conducted in April, 13 months prior to the Delivery Year.

capacity sellers to make available additional MWs of capacity for sale (either generation that did not clear an earlier auction, or generation that has newly become available due to an increase in PJM's rating of a unit's capacity), and also allows capacity buyers to obtain replacement capacity resources before the Delivery Year, if made necessary by the derating of a unit (i.e., the determination that that unit is no longer able to produce some or all of its previously determined capacity) or a decrease in PJM's rating of a unit's capacity. The cost of capacity purchased through the BRA and the Second Incremental Auction are allocated among load-serving entities (LSEs) within PJM. The costs of the First and Third Incremental Auctions are assessed to the capacity buyers purchasing replacement resources in those auctions.[4]

6. To ensure that capacity resources provide the capacity to which they have committed, PJM imposes a Capacity Resource Deficiency Charge on any capacity seller that is unable to deliver its full amount of committed capacity for some or all of that Delivery Year. For each day that the seller is deficient, the deficiency charge is equal to the Daily Deficiency Rate (the greater of: (a) two times the Capacity Resource Clearing Price, or (b) the Net Cost of New Entry) multiplied by the megawatt quantity of deficiency below the level of capacity committed in the sell offer.

2. Mitigation Measures

7. The RPM mechanism also includes mitigation measures to protect customers from the exercise of market power by generators in the RPM auctions. So as to prevent the withdrawal of capacity from the market in order to increase prices, generation capacity resources are required to submit all available capacity in the BRA for a Delivery Year. If a generation resource does not clear in the BRA, that capacity must be offered into the subsequent incremental auctions for that year.

8. Further, if the PJM area (or a local delivery area within PJM) fails the Market Structure Test conducted by the PJM market monitor (i.e., if the monitor determines that one or more sellers may be able to exercise market power), then all sellers in the area are subject to Market Seller Offer Caps for the applicable auction for that Delivery Year.

9. The Offer Cap is based on either (a) the Avoided Cost Rate (ACR), which approximates the total cost of operating a particular generating unit, or (b) the Opportunity Cost for the resource. The Opportunity Cost is defined as ''the documented price available to an existing generation resource in a market external to PJM.''[5]

B. Mitigation in PJM's First BRA and Third Incremental Auction

10. PJM and its stakeholders are currently in a period of transitioning to full implementation of RPM. For Delivery Years during this transitional period, PJM will conduct BRAs, and some (but not all) of the incremental auctions. The Third Incremental Auction will be the last opportunity for parties to adjust their capacity positions through an auction before the applicable Delivery Year begins. The Third Incremental Auction for the 2008–2009 Delivery Year is scheduled to be held in January 2008.

11. To date, PJM has conducted three BRAs. On August 16, 2007, the PJM Market Monitor issued a report that analyzed the first BRA, conducted for the 2007–2008 Delivery Year.[6] The report stated that ''[a]ll participants in the RPM auction failed the market structure tests with the result that offer caps were applied to all sellers.''[7] PJM has not yet conducted an Incremental Auction. However, the Third Incremental Auction for the 2008–2009 Delivery Year is scheduled to begin on January 7, 2008.

C. Mirant's Complaint

12. On November 8, 2007, Mirant filed the instant complaint against PJM under section 206 of the Federal Power Act (FPA).[8] Mirant alleges that the prices yielded in the Third Incremental Auction are ''almost certainly going to be unjust and unreasonable,''[9] and requests the Commission to direct PJM to modify the definition of Opportunity Cost in section 6.7(d)(ii) of the RPM market rules so that, for the Third Incremental Auction only, Opportunity Cost is defined as the higher of the Daily Deficiency Rate or the documented price for exports.[10]

13. Mirant states that the combination of the must-offer requirement for Capacity Resources and what it considers to be the almost certain ACR-based capping of Sell Offers in the Third Incremental Auction will result in market-clearing prices far below competitive market values and far below levels necessary to compensate Capacity Market Sellers for the risks they are compelled to incur.

14. Mirant states that three factors pertaining to the Third Incremental Auction are likely to produce clearing prices at or near ACRs, which Mirant considers to be below prices that would be produced in a competitively workable market. First, Capacity Market Sellers that have newly available capacity are required to offer that capacity into the Third Incremental Auction, and may not hold any capacity as a physical hedge. Second, prices in the Third Incremental Auction will be based on the Sell Offers of Capacity Market Sellers who have additional capacity to sell and the Buy Bids of buyers who need to procure replacement capacity. Third, because there is no comparable Opportunity Cost that reflects the actual opportunity cost associated with supplying the incremental MWs offered in the Third Incremental Auction, Market Seller Offer Caps will be based on ACRs.

15. Mirant asserts that ''there is no real doubt'' that ACR rates will be applied as Offer Caps in the next several Delivery years, and that all existing Generation Capacity Resources will be subject to such offer cap mitigation.[11] Mirant states that buyers in the Third Incremental Auction will know, based on the published results of the BRA for a given Delivery Year, and the fact that PJM does not intend to calculate new ACRs for the Third Incremental Auction, what approximate ACR prices are for those sellers that have positive ACRs. Mirant states that with this knowledge, Capacity Market Buyers can, and likely will, submit Buy Bids with a price equal to or slightly below ACRs, knowing that their bids will clear because Capacity Market Sellers are capped at that level.

16. Mirant states that the price that should result in a workably competitive market is one where the market price equals the opportunity cost of the marginal supplier. Mirant asserts that the economic value of retaining the capacity as uncommitted (which Capacity Suppliers are not permitted to do) is the incremental risk associated with deficiency charges that can be assessed in a given Delivery Year for

[4] Complaint at 7, footnotes omitted.

[5] PJM Open Access Transmission Tariff, Attachment DD, section 6.7(d)(ii).

[6] PJM Market Monitoring Unit, Analysis of the 2007–2008 RPM Auction (Aug. 16, 2007) (PJM Report), available at: *http://www.pjm.com/markets/market-monitor/reports.html.*

[7] According to the Report, 1,090 Capacity Resources submitted Sell Offers in the BRA. Of those 1,090 Capacity Resources, the MMU calculated unit-specific offer caps for 125 units, 392 offers used the default offer caps values posted by the MMU, and 510 offers were price takers. Three offers were based on the seller's documented Opportunity Cost. *See* PJM Report at 1, 4, 5.

[8] 16 U.S.C. 824e (2000).

[9] Complaint at 13–14.

[10] *Id.* at 14.

[11] *Id.* at 16–17.

incremental capacity offered in the Third Incremental Auction. As a result, Mirant states that Sellers will be forced to sell their physical hedge against penalties assessed (at a Daily Deficiency Rate) for a small fraction (the ACR rate) of what their incremental capacity is worth to them.[12]

17. Mirant states that the current definition of Opportunity Cost in the RPM market rules does not provide a solution to the problem of artificially depressed prices in the Third Incremental Auction, because Market Sellers have limited ability to obtain an Opportunity Cost-based Offer Cap due to their limited access to markets external to PJM. Mirant further states that nothing in the Opportunity Cost provision permits Capacity Market Sellers to hedge against the increased risk of paying deficiency charges potentially incurred for incremental capacity committed in the Third Incremental Auction.

18. Accordingly, Mirant requests that the Commission direct PJM to modify the definition of Opportunity Cost to read:

ii. Opportunity Cost:

(a) Opportunity Cost shall be the documented price available to an existing generation resource in a market external to PJM. * * *

(b) In the Third Incremental Auction, Opportunity Cost shall be calculated, at the election of the existing generation resource, either: (i) based on the methodology set forth in (a) above, or (ii) based on the Daily Deficiency Rate for the relevant Delivery Year as calculated by the Office of Interconnection at the time Sell Offers are required to be submitted for the Third Incremental Auction. In the event that the existing generation resource owner chooses option (b), the Market Seller Offer Cap applicable to Sell Offers relying on such generation resource shall be the Daily Deficiency Rate for the relevant Delivery Year.

19. Mirant states that its requested change to the definition of Opportunity Cost would not raise market power concerns. Mirant states that in the Third Incremental Auction, unlike the BRA and other incremental auctions: (1) The price is established by sell offers, not the Variable Resource Requirement curve used in the BRA, (2) participation is limited to Capacity Market Sellers, so Capacity Market Buyers, not Load Serving Entities, pay for MWs cleared, (3) the amount of MWs being offered as additional supply by other market participants is not easily known, (4) there is no direct link between a supplier's share of installed capacity and its share of offered capacity, and (5) a supplier has no material information about the amount of MWs that may be offered by other market participants. Given these distinguishing characteristics of the Third Incremental Auction, Mirant concludes that, because sellers will compete to have their offers cleared, they can be expected to bid at prices below the Offer Cap level of the Daily Deficiency Rate, especially since they will be factoring in their own assessment of the risk of penalty charges in determining what the capacity is ''worth'' to them as a physical hedge.[13]

20. Mirant states that this topic was first raised with the PJM RPM Working Group (RPMWG) on August 10, 2006. Despite several months of discussions and presentations on this issue, the RPMWG still has not reached consensus with respect to whether and how mitigation for the Third Incremental Auction should be modified.

21. Mirant requested Fast Track processing, asking the Commission to act on its Complaint before January 7, 2008.

D. Answers and Comments

22. Notice of Mirant's complaint was published in the **Federal Register**, with answers, motions to intervene and comments due on or before November 29, 2007.[14] PJM filed an answer, Allegheny Energy Services Company (Allegheny), EME Companies *et al.* (EME), PPL and Constellation Parties (PPL/Constellation), the Borough of Chambersburg, PA (Chambersburg), the Old Dominion Electric Cooperative and PJM Industrial Customer Coalition (ODEC/PJMICC), the Southern Maryland Electric Cooperative (SMEC), PEPCO Holdings (PEPCO), the Tenaska Fund Entities (Tenaska) and Tenaska Power Services (Tenaska Power) filed timely comments and protests, and Reliant Energy, Inc., Dayton Power and Light Company, Exelon Corporation, FPL Energy Generators, the Office of the People's Counsel of the District of Columbia, American Electric Power Service Corporation, Dynegy Power Marketing, Inc., North Carolina Electric Membership Corporation, Duke Companies, NRG Companies, the Public Service Commission of Maryland, the Pennsylvania Office of Consumer Advocate, Dominion Resources Services, Inc., the Maryland Office of People's Counsel, and PSEG Companies filed timely motions to intervene. The New Jersey Board of Public Utilities filed a motion to intervene out of time on December 6, 2007. Indicated Buyers filed an answer to the preceding filings on December 4, 2007,[15] and Mirant filed an answer on December 10, 2007.

23. PJM, in its answer, agrees with Mirant's view that because sellers will be required to offer all available capacity into the Third Incremental Auction, and could be compensated at levels well below the value of that capacity to the seller as replacement capacity for its own possible later-occurring deficiencies, the current mitigation provisions are unjust and unreasonable. PJM explains that prospective buyers may either bid up to the level of the deficiency charges they avoid by securing replacement capacity, or they may anticipate that sell offers will be capped and therefore, may have an incentive to submit buy bids consistent with the anticipated range of price-capped sell offers. These anticipated price-capped sell offers will be far below the Daily Deficiency Rate sellers will incur if they become unable to deliver previously committed capacity after the Third Incremental Auction. PJM notes that the Third Incremental Auction will not change prices to load, and only involves a small amount of capacity.

24. PJM clarifies that the mere presence of an incremental auction clearing price lower than the BRA clearing price is not indicative of a market flaw. Rather, it is the possibility that such an outcome could result due to the combination of the must-offer requirement, cost-based mitigation, and buyer knowledge of offer cap levels. PJM states that Mirant's proposed solution properly preserves both the must-offer rule and price caps, but seeks to include within those caps an added component to reflect the seller's lost opportunity to use its available capacity to avoid or mitigate capacity deficiencies it may experience.

25. PJM suggests that it may not be possible to determine the precise appropriate price cap for sell offers, and that the Commission could consider setting the price cap somewhere between the BRA clearing price and the maximum deficiency charge that a seller might risk paying (the relief requested by Mirant). PJM asks the Commission to address this problem before PJM conducts the Third Incremental Auction on January 7, 2008.

[12] *Id.* at 19.

[13] *Id.* at 24.

[14] 72 FR 65,320 (2007).

[15] Indicated Buyers consist of ODEC, PJMICC, SMEC, Portland Cement Association, Mittal Steel, North Carolina Electric Membership Corporation, the Office of the People's Counsel of the District of Columbia, Pennsylvania Office of the Consumer Advocate, the Public Power Association of New Jersey, and Chambersburg.

26. EME Companies *et al.* supported Mirant's complaint, stating that the proposed solution appears to be reasonable, as the modification to the Opportunity Cost definition would permit capacity market sellers with additional capacity deemed available in the Third Incremental Auction to submit sell offers that better reflect the actual opportunity cost of selling into that auction and becoming subject to PJM penalties that are tied to the Daily Deficiency Rate. Tenaska Power also supported Mirant's complaint, explaining that, absent the change sought by Mirant, sellers will be required to sell supply capacity at rates well below their actual opportunity costs, which raises the possibility of confiscatory ratemaking.

27. Other parties oppose Mirant's complaint. Allegheny points out that if the Commission now changes the rules regarding mitigation, those changes should apply to all auctions rather than just the Third Incremental Auction, and should not be applied now, in the middle of an auction cycle, for which parties made commitments and chose to participate based on their understanding of the rules currently in place. Allegheny argues that Mirant is asking the Commission to make a finding that the existing market mitigation rules for the Third Incremental Auction, which it found to be just and reasonable by approving the Settlement Agreement [16] are all of a sudden unjust and unreasonable, before being put into effect.

28. PPL states that Mirant has not demonstrated that it will be injured, arguing that Mirant could hedge its own exposure by buying capacity (presumably through bilateral agreements). PPL states that the proposed remedy benefits sellers with excess capacity and burdens buyers and could also encourage gaming in RPM as capacity providers might try to sell as little capacity as possible in the BRA and hold capacity back to sell in the Third Incremental Auction. PPL argues that under Mirant's proposed remedy, if buyers expect they will be subject to the Deficiency Rate (either by buying replacement capacity, or as a result of being deficient), they may be discouraged from making an advance purchase in the Third Incremental Auction, which could have potential reliability consequences. PPL points out that another flaw in Mirant's proposal is that if prices are expected to be higher in the Third Incremental Auction, sellers will have an incentive to maintain as much capacity as possible to sell in the Third Incremental Auction, thereby discouraging the forward commitment aspect of RPM. ODEC/PJMICC similarly argue that Mirant's complaint is premature, and that its predicted outcome of the Third Incremental Auction is not a certainty. ODEC/PJMICC also point out that Mirant was a party to the RPM Settlement and that Mirant agreed to very clear provisions, including mitigation and the must offer requirement.

29. PEPCO states that Mirant understood the risk it now seeks to remedy, at least as of August 14, 2007. PEPCO points out that capacity market sellers may elect to sell its available capacity bilaterally and avoid the Third Incremental Auction altogether. PEPCO further protests Mirant's proposed remedy because, it states, capacity sellers in the BRA have the same Opportunity Cost and exposure to Daily Deficiency Rates as those in the Third Incremental Auction, yet the remedy only addressed the Third Incremental Auction.

30. The Borough of Chambersburg protests Mirant's proposal on the basis that it has the potential to incent capacity sellers to engage in economic and physical withholding. It further argues that the fundamental basis of the Mirant complaint, that the ACR will distort competitive rates that would prevail in the absence of mitigation, misses the point that because of pervasive market power, offers must be mitigated in order to prevent anti-competitive prices.

31. Several parties suggest that this problem should be resolved through a PJM stakeholder process rather than a complaint proceeding.

II. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2007), the timely, unopposed motions to intervene of the entities that filed them make them parties in this proceeding. Under Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d) (2007), the Commission may grant late-filed motions to intervene, and it does so here.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2003), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Indicated Buyers and Mirant because they have provided information that assisted us in our decision-making process.

B. Analysis

34. Based on the information provided, the Commission finds that the existing tariff may result in prices that are unjust and unreasonable, and establishes hearing and settlement judge procedures to resolve this matter.

35. The Market Seller Offer Cap set at the level of ACR may not appropriately reflect the selling generators' risks in the Third Incremental Auction. This auction, which takes place four months before the Delivery Year begins, is the last market opportunity for generators to sell or procure capacity for that year.[17] Under the RPM rules, generators are not able to withhold any of their capacity for their own use, but must offer that capacity into the market. Since the Third Incremental Auction is the final opportunity to procure replacement capacity by auction, a generator that is forced to sell all of its capacity in that auction and which subsequently becomes unable to deliver that capacity, has no opportunity to purchase replacement capacity in a subsequent incremental auction. Thus, if the generator cannot arrange a private purchase of capacity, it will be required to pay the deficiency charge. The possibility of being assessed the deficiency charge is a risk that generators face when bidding into the RPM Auctions, but the cost associated with that risk is not reflected in the ACR. Thus, under the current rules, generators are required to offer capacity into the Third Incremental Auction at prices that may not compensate them for their full potential risk.[18]

36. We do not, however, agree with Mirant that the solution to this problem is to modify the definition of Opportunity Cost to include the deficiency charge. To do so would, in essence, immediately raise the floor for all mitigated prices up to the level of the deficiency charge, the highest price that could result from the auction. Setting the Market Seller Offer Cap at the deficiency charge appears to establish too high a mitigated offer cap because

[16] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006), *order on reh'g*, 119 FERC ¶ 61,318 (2007).

[17] After the Third Incremental Auction, generators may still sell or procure capacity through bilateral contracts, assuming that they can find a counterparty that close to the time of delivery.

[18] This situation is most likely to be critical in the Third Incremental Auction. A generator that discovers prior to the Third Incremental Auction that it is unable to deliver may avoid the deficiency charge by acquiring replacement capacity in one of the incremental auctions and paying the market clearing price in that auction. Thus, the same argument for revising the ACR mitigation rate as the mitigated bid price does not apply to the earlier auctions.

the risk of each generator being unable to meet its capacity obligation clearly is less than 100 percent. Setting a Market Seller Offer Cap at the deficiency charge, therefore, might permit the exercise of market power by generators.[19] No party has presented evidence in this proceeding to document the risk that a generator committed to provide capacity will be unable to meet its capacity obligation. The PJM Market Monitor also has recognized that the existing Market Seller Offer Cap may be too low and has proposed that, if the Commission determines that the offer cap should be modified for this Third Incremental Auction pending a stakeholder process, the clearing price from the BRA could be used as the price of capacity transactions in this auction, although only in the event that the price would otherwise be low or zero.[20]

37. Because there is reason to believe that the existing rate is not just and reasonable and because we have no evidence to establish a just and reasonable replacement rate, we will set this matter for settlement judge and trial-type hearing. At hearing, we will direct the parties to examine the likelihood that resources (or particular classes of resources) will be unable to provide their committed capacity when demanded, and thus, the likelihood that the owner of that resource will be required to pay a deficiency charge. The parties may also consider alternative mechanisms that would mitigate the potential risks suppliers face in the Third Incremental Auction without modifying the offer cap, including but not limited to examining other possible hedging mechanisms.

38. We will dismiss the complaint with respect to the auction to be conducted on January 7, 2008. Given the timing of this filing, the issues raised, and Mirant's own recognition that its initially proposed replacement rate may not be just and reasonable, we cannot resolve this proceeding prior to January 7, 2008. Moreover, because this is a market-determined result, refunds based on a subsequently determined Market Seller Offer Cap could not be accurately calculated.[21] However, we instruct the Administrative Law Judge (ALJ) and the parties to set a hearing schedule that will leave sufficient time for an initial decision and Commission review prior to the next Third Incremental Auction.

39. PJM has already been pursuing settlement of its issue through its RPM Working Group.[22] To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[23] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[24] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

40. Pursuant to section 206(b) of the FPA, the Commission must establish a refund effective date that is no earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. Because, as discussed above, the results of the hearing cannot be applied to the January 7, 2008 auction, the Commission will establish a refund effective date of 5 months from the date of the complaint. The Commission is also required by section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this section 206 investigation within 180 days of the date this order issues.

The Commission orders:

(A) Mirant's complaint is hereby granted, in part, and dismissed in part, as discussed above.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter 1), a public hearing shall be held in Docket No. EL08–8–000 to examine the justness and reasonableness of the calculation of the mitigated bid rate for the Third Incremental Auction as discussed in the body of this order.

(C) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the

[19] For instance, if there were a complete monopoly in a local delivery area (with only one generator participating in the auction) and that generator had excess capacity, allowing the generator to bid the deficiency charge would set the price at the deficiency charge even though the generator did not face a reasonable risk of being unable to deliver.

[20] PJM MMU Response to Mirant Complaint re RPM auction, attachment to Indicated Buyers answer, at 9.

[21] Moreover, both equity and the desire to protect market certainty counsel against applying the result in this case to the January 7 auction, since, as several protesters pointed out, all parties entered this first cycle of RPM auctions with the expectation that the market rules agreed to in the RPM settlement would remain in place.

[22] PJM notes that it has discussed this matter at the RPM Working Group on August 14, 2007, October 10, 2007, and October 25, 2007, and that ''[c]onsideration of possible changes to the offer caps in the incremental auctions * * * has been assigned a 'high' priority by the working group.'' PJM answer at 6–7.

[23] 18 CFR 385.603 (2007).

[24] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202–502–8500 within five days of this order. The Commission's Web site contains a list of Commission judges and a summary of their background and experience (*http://www.ferc.gov*—click on Office of Administrative Law Judges).

Commission's Rules of Practice and Procedure.

(G) The Secretary is directed to publish a copy of this order in the **Federal Register**.

(H) The refund effective date in Docket No. EL08–8–000 established pursuant to section 206(b) of the Federal Power Act is 5 months from the date of the filing of the complaint.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–301 Filed 1–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the U.S. Department of Energy (DOE), announces the availability of the Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement (Draft Complex Transformation SPEIS, DOE/EIS–0236–S4). The Draft Complex Transformation SPEIS analyzes the potential environmental impacts of reasonable alternatives to continue the transformation of the U.S. nuclear weapons complex to one that is smaller, more efficient, more secure, and better able to respond to changes in national security requirements. While NNSA has revised the document title from that indicated in the Notice of Intent, it remains a supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement. NNSA has prepared this document in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and DOE procedures implementing NEPA (10 CFR Part 1021).

DATES: NNSA invites comments on the Draft Complex Transformation SPEIS during the 90-day public comment period, which ends on April 10, 2008. NNSA will consider comments received after this date to the extent practicable as it prepares the Final Complex Transformation SPEIS. NNSA will hold 19 public hearings on the Draft Complex Transformation SPEIS. The locations, dates, and times are listed in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Requests for additional information on the Draft Complex Transformation SPEIS, including requests for copies of the document, should be directed to: Mr. Theodore A. Wyka, Complex Transformation SPEIS Document Manager, Office of Transformation, NA–10.1, Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585, toll free 1–800–832–0885 ext. 63519. Written comments on the Draft Complex Transformation SPEIS should be submitted to the above address, by facsimile to 1–703–931–9222, or by e-mail to *complextransformation@nnsa.doe.gov.* Please mark correspondence ''Draft Complex Transformation SPEIS Comments.''

For general information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at *http://www.eh.doe.gov/nepa.*

SUPPLEMENTARY INFORMATION: *Public Hearings and Invitation to Comment.* NNSA will hold 19 public hearings on the Draft Complex Transformation SPEIS. The hearings will be held at the following locations, dates, and times:

North Augusta, South Carolina, North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC, Thursday, February 21, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Oak Ridge, Tennessee, New Hope Center, 602 Scarboro Road (Corner of New Hope and Scarboro Roads), Oak Ridge, TN, Tuesday, February 26, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Amarillo, Texas, Amarillo Globe-News Center, Education Room, 401 S. Buchanan, Amarillo, TX, Thursday, February 28, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Tonopah, Nevada, Tonopah Convention Center, 301 Brougher Avenue, Tonopah, NV, Tuesday, March 4, 2008 (6 p.m.–10 p.m.)

Las Vegas, Nevada, Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, NV, Thursday, March 6, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Socorro, New Mexico, Macey Center (at New Mexico Tech), 801 Leroy Place, Socorro, NM, Monday, March 10, 2008 (6 p.m.–10 p.m.)

Albuquerque, New Mexico, Albuquerque Convention Center, 401 2nd Street NW, Albuquerque, NM, Tuesday, March 11, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Los Alamos, New Mexico, Hilltop House, 400 Trinity Drive at Central, Los Alamos, NM, Wednesday, March 12, 2008 (6 p.m.–10 p.m.)

Los Alamos, New Mexico, Hilltop House, 400 Trinity Drive at Central, Los Alamos, NM, Thursday, March 13, 2008 (11 a.m.–3 p.m.)

Santa Fe, New Mexico, Genoveva Chavez Community Center, 3221 Rodeo Road, Santa Fe, NM, Thursday, March 13, 2008 (6 p.m.–10 p.m.)

Tracy, California, Holiday Inn Express, 3751 N. Tracy Blvd., Tracy, CA, Tuesday, March 18, 2008 (6 p.m.–10 p.m.)

Livermore, California, Robert Livermore Community Center, 4444 East Avenue, Livermore, CA, Wednesday, March 19, 2008 (11 a.m.–3 p.m. and 6 p.m.–10 p.m.)

Washington, DC, Forrestal Building, 1000 Independence Ave, SW., Washington, DC, Tuesday, March 25, 2008 (11 a.m.–3 p.m.)

Individuals who would like to present comments orally at these hearings must register upon arrival at the hearing. NNSA will allot three to five minutes, depending upon the number of speakers, to each individual wishing to speak so as to ensure that as many people as possible have the opportunity to speak. More time may be allotted by the hearing moderator as circumstances allow. NNSA officials will be available to discuss the Draft Complex Transformation SPEIS and answer questions during the first hour. NNSA will then hold a plenary session at each public hearing in which officials will explain the Draft Complex Transformation SPEIS and the analyses in it. Following the plenary session, the public will have an opportunity to provide oral and written comments. Oral comments from the hearings and written comments submitted during the comment period will be considered by NNSA in preparing the Final Complex Transformation SPEIS.

The Draft Complex Transformation SPEIS and additional information regarding complex transformation are available on the Internet at *http://www.ComplexTransformationSPEIS.com* and *http://www.nnsa.doe.gov.* The Draft

Complex Transformation SPEIS and referenced documents are available to the public at the DOE Reading Rooms and public libraries listed below:

California

Lawrence Livermore National Laboratory, NNSA/LSO Public Reading Room, LLNL Discovery Center (Visitors Center), Building 651, East Gate Entrance, Greenville Road, Livermore, CA 94550, Phone: (925) 422–4599.

Livermore Public Library, 1188 S. Livermore Avenue, Livermore, CA 94550, Phone: (925) 373–5500.

Tracy Public Library, 20 East Eaton Avenue, Tracy, CA 95376, Phone: (209) 937–8221.

Georgia

Southeastern Power Administration, Technical Library, 1166 Athens Tech Road, Elberton, GA 30635, Phone: (706) 213–3815.

Missouri

Kansas City Public Library, 14 West 10th Street, Kansas City, MO 64105, Phone: (816) 701–3400.

North-East Branch of the Kansas City Library, 6000 Wilson Road, Kansas City, MO 64123, Phone: (816) 701–3485.

Nevada

NNSA Nevada Site Office, Public Reading Room, 755 E. Flamingo Road, Las Vegas, NV 89119, Phone (702) 295–3521.

Tonopah Public Library, 167 S. Central Street, Tonopah, NV 89049, Phone: (775) 482–3374.

New Mexico

Los Alamos National Laboratory, Research Library, West Jemez Road, Los Alamos, NM 87545, Phone: (505) 667–5809.

NNSA Service Center, Zimmerman Library, Government Documents, University of New Mexico, Albuquerque, NM 87131, Phone: (505) 277–5441.

Mesa Public Library, 2400 Central Avenue, Los Alamos, NM 87544, Phone: (505) 662–8240.

Santa Fe Public Library, 145 Washington Avenue, Santa Fe, NM 87501, Phone: (505) 955–6780.

Socorro Public Library, 401 Park Street, Socorro, NM 87801, Phone: (505) 835–1114.

South Carolina

U.S. Department of Energy, Public Reading Room, University of South Carolina, 471 University Parkway, Aiken, SC 29801, Phone: (803) 641–3320.

Tennessee

Oak Ridge Site Operations Office, DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN 37830, Phone: (865) 241–4780.

Texas

Amarillo Central Library, 413 E. 4th, Amarillo, TX 79101, Phone: (806) 378–3054.

Amarillo North Branch Library, 1500 NE 24th, Amarillo, TX 79107, Phone: (806) 381–7931.

Washington, DC

U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–3142.

Background. The national security of the United States requires NNSA to maintain a safe, secure, and reliable nuclear weapons stockpile and core competencies in nuclear weapons. The Nation's national security requirements are established by the President and funded by the Congress, which have assigned to NNSA the responsibility of maintaining a nuclear arsenal and a complex of nuclear facilities capable of supporting this highly technical mission. The Draft Complex Transformation SPEIS is a Supplement to the 1996 Stockpile Stewardship and Management Programmatic Environmental Impact Statement, which analyzed programmatic alternatives for the weapons complex in the absence of nuclear testing. NNSA maintains the safety, security, and reliability of nuclear weapons through the Stockpile Stewardship Program. This program currently involves integrated activities at three NNSA national laboratories, four industrial plants, and a nuclear weapons test site. The effects of old facilities, aging weapons, and evolving national security requirements have led NNSA to propose further changes to the Complex in order to create a smaller and more responsive, efficient, and secure infrastructure, especially with regards to special nuclear materials (SNM).[1]

Today's Complex consists of eight major sites located in seven states, and the Tonopah Test Range (TTR). It enables NNSA to design, develop, manufacture, and maintain nuclear weapons; certify their safety, security, and reliability; conduct surveillance on them; store Category I/II[2] quantities of SNM; and dismantle and disposition retired weapons. The major sites within the Complex are the Y–12 National Security Complex (Y–12), Oak Ridge, Tennessee; Savannah River Site (SRS), Aiken, South Carolina; Pantex Plant (Pantex), Amarillo, Texas; Los Alamos National Laboratory (LANL), Los Alamos, New Mexico; Lawrence Livermore National Laboratory (LLNL), Livermore, California; Sandia National Laboratories (SNL), Albuquerque, New Mexico, and other locations; Nevada Test Site (NTS), 65 miles northwest of Las Vegas, Nevada; and the Kansas City Plant (KCP), Kansas City, Missouri.

NNSA conducted a public scoping process that began with the publication of a Notice of Intent (NOI) in the **Federal Register** on October 19, 2006 (71 FR 61731), in which NNSA announced it intended to prepare a SPEIS and invited public comment on the scope of the environmental review. In the NOI, NNSA's proposed action was referred to as Complex 2030. NNSA now believes that the term Complex Transformation better reflects the proposed action and alternatives evaluated because NNSA anticipates that it would be able to accomplish much of the proposed transformation in the next decade (i.e., well before 2030). The NOI also announced the schedule for public scoping meetings that were held in November and December 2006, near sites that might be affected by continued transformation of the Complex and in Washington, DC. In addition to the meetings, the public was encouraged to provide comments via mail, e-mail, and fax. More than 33,000 comment documents were received from individuals, interested groups, Federal, state, and local officials, and Tribes during the scoping period. All comments received during the 90-day public scoping period were considered by NNSA in preparing the Draft Complex Transformation SPEIS. All late comments received were also reviewed and, in general, determined to be similar to comments submitted within the 90-day period. NNSA's development and analysis of alternatives for the SPEIS reflect consideration of these comments.

The Draft Complex Transformation SPEIS analyzes two proposed actions. The first proposed action would restructure SNM facilities (facilities that use plutonium and highly enriched uranium to produce components for the nuclear weapons stockpile). The second

[1] As defined in Section 11 of the *Atomic Energy Act* of 1954, SNM is: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235; or (2) any material artificially enriched by any of the foregoing and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material.

[2] Special nuclear materials are grouped into Security Categories I, II, III, and IV based on the type, attractiveness level, and quantity of the materials. Categories I and II require the highest level of security.

proposed action would restructure research and development (R&D) and testing facilities. These two proposed actions differ in their magnitude and timing. The alternatives for restructuring SNM facilities, which would take 10 years or more, are necessarily broad and address issues such as where to locate these facilities and whether to construct new facilities or renovate existing ones for these functions. As such, the Draft Complex Transformation SPEIS analysis is ''programmatic'' for the proposed action of restructuring SNM facilities. Tiered, project-specific NEPA documents would likely be needed to inform decisions unless existing site-wide EIS's or other NEPA documents were sufficient.

In comparison, NNSA proposes to pursue restructuring of R&D and testing facilities in the near-term, independent of decisions it may make as to restructuring of SNM facilities. The proposed action to restructure R&D and testing facilities would likely not require further NEPA documentation to implement decisions after NNSA issues the Final Complex Transformation SPEIS and Record of Decision.

The alternatives for restructuring SNM facilities are: (1) No Action; (2) Distributed Centers of Excellence; (3) Consolidated Centers of Excellence; and (4) Capability-Based. Common to each of these are alternatives to consolidate storage of certain SNM. The No Action Alternative represents continuation of the status quo including implementation of decisions already made on the basis of prior NEPA analyses. Under the No Action Alternative, NNSA would not make major changes to the missions assigned to NNSA sites.

The Distributed Centers of Excellence Alternative retains the three major SNM functions (plutonium, uranium, and weapon assembly/disassembly) involving Category I/II quantities of SNM at up to three sites. This alternative would create a consolidated plutonium center for R&D, storage, processing, and manufacture of plutonium parts for nuclear weapons. The following sites are evaluated for the consolidated plutonium center: Los Alamos, NTS, Pantex, SRS, and Y–12. Uranium storage and operations (including the storage and use of highly enriched uranium) would remain at Y–12. Weapons assembly, disassembly, and high explosive fabrication would remain at Pantex.

The Consolidated Centers of Excellence Alternative consolidates the three major SNM functions (plutonium, uranium, and weapon assembly/disassembly) involving Category I/II quantities of SNM at one or two sites. The single site option is referred to as the Consolidated Nuclear Production Center option and the two site option is referred to as the Consolidated Nuclear Center option. Three major facilities are involved in this alternative: a Consolidated Plutonium Center, a Consolidated Uranium Center, and an assembly/disassembly/high explosives facility, which would assemble and disassemble nuclear weapons, and fabricate high explosives. The following sites are evaluated for these facilities: Los Alamos, NTS, Pantex, SRS, and Y–12.

Under the Capability-Based Alternative, NNSA would maintain basic capabilities for manufacturing components for all stockpile weapons, as well as laboratory and experimental capabilities to support stockpile decisions, but would reduce production capabilities at existing or planned facilities. Under this alternative, pit production at LANL would not be expanded beyond a capability to provide 50 pits [3] per year. Production capacities at Pantex, Y–12, and SRS (tritium production) would be reduced to capability-based levels.

To consolidate Category I/II quantities of SNM, NNSA proposes to remove Category I/II SNM from LLNL by approximately 2012, and phase-out operations at LLNL involving Category I/II quantities of SNM.[4] NNSA is also proposing to transfer more than 10,000 pits currently stored at Pantex in Zone 4 to Zone 12, enabling all Category I/II quantities of SNM at Pantex to be consolidated into a central location, close to assembly, modification, and disassembly operations.

For the proposed action to restructure R&D and testing facilities, the alternatives focus on immediate options to consolidate, relocate, or eliminate duplicative facilities and programs and to improve operating efficiencies. The following five functional capabilities are evaluated for this proposed action: tritium R&D; high explosives R&D; hydrodynamic testing; major environmental testing; and flight test operations. The sites potentially affected by decisions regarding these alternatives are: LANL, LLNL, SNL, NTS, Pantex, TTR, SRS, Y–12, and the White Sands Missile Range (WSMR). The WSMR, located in south-central New Mexico, is the largest installation in the Department of Defense. WSMR is being considered as a location for NNSA's flight test operations that are now conducted at TTR. Alternatives to relocate the current non-nuclear component design and engineering work at SNL/California also are being evaluated in this proposed action.

While NNSA has proposed to modernize its facilities that produce non-nuclear components in Kansas City, Missouri, this proposal is evaluated in a separate NEPA analysis. The General Services Administration (GSA), as the lead agency, and NNSA, as a cooperating agency, announced the availability of a draft Environmental Assessment on December 10, 2007 (72 FR 69690) that evaluates the potential environmental impacts of a proposal for GSA to procure the construction of a new facility to house NNSA's procurement and manufacturing operations for non-nuclear components. A recent analysis demonstrates that transferring non-nuclear operations outside of the Kansas City area is not cost effective. Whether non-nuclear operations remain at the current Kansas City Plant or move to a new facility in the vicinity of Kansas City would not affect nor be affected by decisions NNSA makes regarding alternatives evaluated in the Draft Complex Transformation SPEIS.

Other Federal Agency Involvement. The Department of the Air Force and U.S. Army Garrison White Sands are cooperating agencies in the preparation of the Draft Complex Transformation SPEIS.

Issued in Washington, DC, on January 7, 2008.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. E8–365 Filed 1–10–08; 8:45 am]

BILLING CODE 6450–01–P

[3] A pit is the central core of a nuclear weapon, typically containing plutonium-239, that undergoes fission when compressed by high explosives.

[4] The LLNL Site-wide EIS (DOE/EIS–0348 and DOE/EIS–0236–S3, March 2005) assesses the environmental impacts of transporting SNM to and from LLNL and other sites as part of the proposed action, which NNSA decided to implement (70 FR 71491, November 29, 2005). That analysis includes consideration of transportation actions involving greater quantities of SNM and more shipments than are identified in this draft SPEIS.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for

copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070303, ERP No. D–FRA–K53012–CA, Bay Area to Central Valley High-Speed Train (HST) Project, Provide a Reliable High-Speed Electrified Train System to Link Bay Area Cities to the Central Valley, Sacramento, and South California.

Summary: EPA expressed environmental concerns about impacts to aquatic resources, growth-related impacts, and cumulative impacts. Rating EC2.

EIS No. 20070399, ERP No. D–FTA–E40816–FL, Tier 1 Programmatic—Jacksonville Rapid Transit System (RTS), Improvement to Transportation in Four Primary Transit Corridors Radiating from Downtown Jacksonville, Duval County, FL.

Summary: EPA expressed environmental concerns about impacts to air quality, floodplains, wetlands, and low-income/minority communities, and requested additional information and mitigation measures. Rating EC1.

EIS No. 20070426, ERP No. D–FHW–K40265–CA, CA–76 Corridor Project, Transportation Improvements from Melrose to South Mission Highway, San Diego County, CA.

Summary: EPA expressed environmental concerns about indirect and cumulative impacts to biological and aquatic resources as well as the relationship of the proposed project to future expansion of State Route 76 to the east. Rating EC2.

EIS No. 20070454, ERP No. D–BIA–J65498–WY, Riverton Dome Coal Bed Natural Gas (CBNG) and Conventional Gas Development Project, Construction of Well Pads, Roads, Pipelines, and Production Facilities, Wind River Indian Reservation (WRIR), Fremont County, WY.

Summary: EPA expressed environmental concerns about impacts to air quality from particulate matter and recommended the analysis incorporate more recent particulate matter background concentration data. EPA also expressed concerns about environmental justice, cultural resources, soil resources and water quality. Rating EC2.

EIS No. 20070463, ERP No. D–CGD–E03017–FL, Calypso Liquefied Natural Gas (LNG) Deepwater Port License Application, Proposes to Own, Construct and Operate a Deepwater Port, Outer Continental Shelf (OCS) in the OCS NG 17–06 (Bahamas) Lease Area, 8 to 10 miles off the East Coast of Florida to the Northeast of Port Everglades, FL.

Summary: EPA expressed environmental concerns about the air impacts from the proposed LNG regasification port, and the potential impact to marine bottom communities from construction of the pipelines, and requested additional information about the analysis of air impacts and the planned construction methods for pipelines, and consideration of mitigation for both impacts. Rating EC2.

EIS No. 20070482, ERP No. D–FHW–J40180–UT, UT–108 Transportation Improvement Project, To Improve Local and Regional Mobility from UT–108 between UT–127 (Antelope Drive) to UT–126 (1900 West) Located in Syracuse, West Point and Clinton in Dave County, and Roy and West Haven in Weber County, UT.

Summary: EPA expressed environmental concerns about potential air impacts to sensitive receptors. In addition, EPA suggests the FEIS evaluate the indirect effects of the increased rate of growth caused by new highway construction. Rating EC2.

EIS No. 20070483, ERP No. DS–FHW–E40716–TN, Kirby Parkway Project, Construction from Macon Road to Walnut Grove Road, U.S. Army COE section 401 and 404 Permits, Shelby County, TN.

Summary: EPA expressed environmental concerns about potential impacts to water quality and aquatic habitat due to construction and future operation of the project. Rating EC1.

Final EISs

EIS No. 20070405, ERP No. F–AFS–J61111–00, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Winter Use Plan, To Provide a Framework for Managing Winter Use Activities, Implementation, Fremont County, ID, Gallatin and Park Counties, MT Park and Teton Counties, WY.

Summary: EPA acknowledges the improvements gained in the Parks' winter environment compared to historic conditions. However, EPA continues to have environmental concerns about adverse impacts from snowmobile use on air quality and visitor experiences.

EIS No. 20070442, ERP No. F–FHW–K40260–CA, Interstate 5/Cosumnes River Boulevard Interchange Project, Extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard with an Interchange at Interstate 5, South of the Pocket/Meadowview Road Interchange and North of the Laguna Boulevard Interchange, City of Sacramento, Sacramento County, CA.

Summary: EPA does not object to the proposed project.

EIS No. 20070477, ERP No. F–MMS–A09833–00, PROGRAMMATIC—Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Implementation, Atlantic, Gulf of Mexico, Pacific and Alaska.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070505, ERP No. F–WPA–K08032–CA, Trinity Public Utilities District Direct Interconnection Project, Construct and Operate a 16-mile Long 60–Kilovolt Power Transmission Facilities (DOE/EIS–0389), Trinity County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070506, ERP No. F–AFS–K65303–CA, Phoenix Project, Proposes to Use a Combination of Contract and Forest Service Crew to Treat Poor Forest Health and High Fire Hazard Conditions, Develop a Network Defensible Fuel Profile Zones (DFPZs), Sierraville Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA.

Summary: EPA does not object to the proposed action.

EIS No. 20070509, ERP No. F–FHW–E40807–SC, Interstate 73 Southern Project, Construction from I–95 to the Myrtle Beach Region, Funding, NPDES Permit, U.S. Coast Guard Permit, U.S. Army COE section 404 Permit, Dillon, Horry and Marion Counties, SC.

Summary: EPA continues to have environmental concerns about wetland impacts.

Dated: January 8, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–357 Filed 1–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 12/31/2007 through 01/04/2008

Pursuant to 40 CFR 1506.9.

EIS No. 20070560, Second Final Supplement, NOA, 00, Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, Amendment 14 to the Fishery Management Plan, Additional Information to Analyze a Range of Management Alternatives to End Bottomfish Overfishing in the Hawaiian Archipelago, HI, GU and AS, *Wait Period Ends:* 02/15/2008, *Contact:* William L Robinson, 808–944–2200.

EIS No. 20080000, Final EIS, FHW, WA, Southeast Issaquah Bypass Construction, Updated Information, New North/South Arterial Connecting Front Street with I–90 at the Sunset Interchange, Right-of-Way Permit, NPDES Permit and COE Section 404 Permit, King County, WA, *Wait Period Ends:* 02/11/2008, *Contact:* Pete Jilek, 360–753–9551.

EIS No. 20080001, Final EIS, COE, TX, Brazos Harbor Navigation District Project, Proposed Port Freeport Channel Widening to the Entrance and Jetty Reach of the Freeport Harbor Jetty Channel and Entrance, Brazoria County, TX, *Wait Period Ends:* 02/11/2008, *Contact:* Sam Watson, 409–766–3946.

EIS No. 20080002, Draft EIS, BLM, CA, Sunrise Powerlink Transmission Line Project, Proposed Land Use Plan Amendment, Construction and Operation of a New 91-mile 500 kilovolt (kV) Electric Transmission Line from Imperial Valley Substation (in Imperial Co. near the City of El Centro) to a New Central East Substation (in Central San Diego Co), Imperial and San Diego Counties, CA, *Comment Period Ends:* 04/11/2008, *Contact:* Lynda Kastoll, 760–337–4421.

EIS No. 20080003, Final EIS, AFS, WA, Old Curlew Ranger Station Facilities Disposal Project, Proposal to Sell 3-Acre Parcel Including Buildings, Republic Ranger District, Colville National Forest, South Side of Curlew, Ferry County, WA, *Wait Period Ends:* 02/11/2008, *Contact:* James L. Parker, 509–775–7462.

EIS No. 20080004, Draft EIS, NSA, 00, PROGRAMMATIC—EIS—Complex Transformation, to Make the US Nuclear Weapon Complex Smaller, and More Responsive, Efficient and Secure in Order to Meet National Security Requirements, CA, NV, NM, SC, TN and TX, *Comment Period Ends:* 04/09/2008, *Contact:* Theodore A. Wyka, 1–800–832–0885, Ext 63519.

EIS No. 20080005, Final EIS, NRS, 00, West Tarkio Creek Watershed Plan, Construction of a Multiple-Purpose Structure for Rural Water Supply, Recreational Opportunities and Agricultural Pollution Control, Page, Montgomery and Fremont Counties, IA and Atchison County, MO, *Wait Period Ends:* 02/11/2008, *Contact:* David Beck, 515–284–4135.

EIS No. 20080006, Draft EIS, FHW, NE, Nebraska Highway 35 (N–35) Corridor, to Improve 66-mile from Norfolk to South Sioux City, Funding, Madison, Stanton, Wayne, Dixon, Dakota Counties, NE, *Comment Period Ends:* 02/25/2008, *Contact:* John Snowdon, 402–437–5975.

EIS No. 20080007, Final EIS, STA, 00, Keystone Oil Pipeline Project, Proposed Construction, Connection, Operation and Maintenance, Applicant for Presidential Permit, ND, SD, NE, KS, MO, IL and OK, *Wait Period Ends:* 02/11/2008, *Contact:* Elizabeth Orlando, 202–647–4284.

Amended Notices

EIS No. 20070529, Draft EIS, NCP, DC, Smithsonian Institution National Museum of African American History and Culture, Construction and Operation, Between 14th and 15th Streets, NW., and Constitution Avenue, NW., and Madison Drive, NW., Washington, DC, *Comment Period Ends:* 02/18/2008, *Contact:* Gene Keller, 202–482–7251.

Revision of FR Notice Published 12/21/2007: Extending Comment Period from 02/04/2008 to 02/18/2008.

EIS No. 20070534, Draft EIS, AFS, ID, Idaho Roadless Area Conservation Project, to Provide State-Specific Direction for the Conservation and Management of Inventoried Roadless Areas, National Forest System Lands in Idaho, *Comment Period Ends:* 04/07/2008, *Contact:* Brad Gilbert, 208–765–7438.

Revision to FR Notice Published 12/21/2007: Extending Comment Period from 03/13/2008 to 04/07/2008.

EIS No. 20070541, Draft Supplement, NOA, AK, Cook Inlet Beluga Whale Subsistence Harvest Project, Proposes to Implement a Long-Term Harvest Plan and Fulfill the Federal Government's Trust Responsibility, Cook Inlet, AK, *Comment Period Ends:* 03/04/2008, *Contact:* Barbara Mahoney, 907–271–3448.

Revision of FR Notice Published 12/28/2007: Correction to Comment Period from 02/11/2008 to 03/04/2008.

EIS No. 20070545, Draft EIS, IBR, ND, Northwest Area Water Supply Project, to Construct a Biota Water Treatment Plant, Lake Sakakawea, Missouri River Basin to Hudson Bay Basin, ND, *Comment Period Ends:* 02/26/2008, *Contact:* Alice Waters, 701–221–1206.

Revision of FR Notice Published 12/28/2007: Correction to Comment Period from 02/11/2008 to 02/26/2008.

Dated: January 8, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–358 Filed 1–10–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8515–9; Docket ID No. EPA–HQ–ORD–2007–0920]

Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meeting—January 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Human Health Risk Assessment Subcommittee.

DATES: The meeting (via teleconference) will be held on January 28, 2008, from 3:30 p.m. to 5:30 p.m. eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Joanna Foellmer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments,

identified by Docket ID No. EPA–HQ–ORD–2007–0920, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention: Docket ID No. EPA–HQ–ORD–2007–0920.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0920.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meetings—Fall 2007 Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0920.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention: Docket ID No. EPA–HQ–ORD–2007–0920.

Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0920. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meetings—Fall 2007 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail to: Joanna Foellmer, Mail Code 8601P, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (703) 347–8508; via fax at: (703) 347–8696; or via e-mail at: *foellmer.joanna@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Joanna Foellmer, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda item for the meeting includes, but is not limited to: discussion of the subcommittee's draft report on ORD's Human Health Risk Assessment Program. The meeting is open to the public. The subcommittee roster and charge can be accessed at: *http://www.epa.gov/osp/bosc/subcomm-hhra.htm.*

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Joanna Foellmer on (703) 347–8508 or *foellmer.joanna@epa.gov.* To request accommodation of a disability, please contact Joanna Foellmer, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 3, 2008.

Connie Bosma,

Acting Director, Office of Science Policy.

[FR Doc. E8–361 Filed 1–10–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2008–N–01]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2006–07 eighth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before February 29, 2008.

ADDRESSES: Bank members selected for the 2006–07 eighth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV.*

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202/408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the February 29, 2008 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 25, 2008, each Bank will notify the members in its district that have been selected for the 2006–07 eighth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *WWW.FHFB.GOV*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2006–07 eighth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Savings Bank of Danbury	Danbury	Connecticut.
VantisLife Insurance Company	East Hartford	Connecticut.
American Eagle Federal Credit Union	East Hartford	Connecticut.
Dime Bank	Norwich	Connecticut.
Stafford Savings Bank	Stafford Springs	Connecticut.
Sikorsky Financial Credit Union	Stratford	Connecticut.
Torrington Savings Bank	Torrington	Connecticut.
Constitution Corporate Federal Credit Union	Wallingford	Connecticut.
Webster Bank, N.A	Waterbury	Connecticut.
Biddeford Savings Bank	Biddeford	Maine.
Atlantic Regional Federal Credit Union	Brunswick	Maine.
Central Maine Federal Credit Union	Lewiston	Maine.
Rainbow Federal Credit Union	Lewiston	Maine.
Evergreen Credit Union	Portland	Maine.
The Provident Bank	Amesbury	Massachusetts.
Athol-Clinton Co-operative Bank	Athol	Massachusetts.
The Village Bank	Auburndale	Massachusetts.
Brookline Municipal Credit Union	Brookline	Massachusetts.
Metropolitan Credit Union	Chelsea	Massachusetts.
Pilgrim Bank	Cohasset	Massachusetts.
First Priority Credit Union	East Boston	Massachusetts.
Everett Co-operative Bank	Everett	Massachusetts.
St. Anne's Credit Union of Fall River, Mass	Fall River	Massachusetts.
I. C. Federal Credit Union	Fitchburg	Massachusetts.
Holyoke Credit Union	Holyoke	Massachusetts.
Jeanne D'Arc Credit Union	Lowell	Massachusetts.
St. Mary's Credit Union	Marlborough	Massachusetts.
Medway Co-operative Bank	Medway	Massachusetts.
Merrimac Savings Bank	Merrimac	Massachusetts.
Millbury National Bank	Millbury	Massachusetts.
Greylock Federal Credit Union	Pittsfield	Massachusetts.
Legacy Banks	Pittsfield	Massachusetts.
Bridgewater Savings Bank	Raynham	Massachusetts.
Winter Hill Bank, FSB	Somerville	Massachusetts.
Member Plus Credit Union	Somerville	Massachusetts.
MBTA Employees Credit Union	South Boston	Massachusetts.
Mount Washington Co-Operative Bank	South Boston	Massachusetts.
Wakefield Co-operative Bank	Wakefield	Massachusetts.
Webster Five Cents Savings Bank	Webster	Massachusetts.
Mutual Federal Savings Bank of Plymouth County	Whitman	Massachusetts.
Winchester Savings Bank	Winchester	Massachusetts.
Ledyard National Bank	Hanover	New Hampshire.
Monadnock Community Bank	Peterborough	New Hampshire.
Northeast Credit Union	Portsmouth	New Hampshire.
Woodsville Guaranty Savings Bank	Woodsville	New Hampshire.

Coastway Credit Union	Cranston	Rhode Island.
People's Credit Union	Middleton	Rhode Island.
Pawtucket Credit Union	Pawtucket	Rhode Island.
Opportunities Credit Union	Burlington	Vermont.
Community National Bank	Derby	Vermont.
First National Bank of Orwell	Orwell	Vermont.
Wells River Savings Bank	Wells River	Vermont.

Federal Home Loan Bank of New York—District 2

Summit Federal Savings Bank	Dunellen	New Jersey.
Sterling Bank	Mount Laurel	New Jersey.
Ridgewood Savings Bank	Ridgewood	New Jersey.
Roselle Savings Bank	Roselle	New Jersey.
Greater Community Bank	Totowa	New Jersey.
Sun National Bank	Vineland	New Jersey.
Valley National Bank	Wayne	New Jersey.
Marathon National Bank of New York	Astoria	New York.
Seneca Federal Savings and Loan Association	Baldwinsville	New York.
Ballston Spa National Bank	Ballston Spa	New York.
The Dime Savings Bank of Williamsburgh	Brooklyn	New York.
The North Country Savings Bank	Canton	New York.
Community Bank, National Association	Canton	New York.
Carthage Federal Savings and Loan	Carthage	New York.
Lake Shore Savings Loan Association	Dunkirk	New York.
The First National Bank of Jeffersonville	Jeffersonville	New York.
North Fork Bank	Melville	New York.
Interaudi Bank	New York	New York.
The Seneca Falls Savings Bank	Seneca Falls	New York.
Geddes Federal Savings and Loan	Syracuse	New York.
Alliance Bank, NA	Syracuse	New York.
The National Bank of Delaware County	Walton	New York.
Sound Federal Savings	White Plains	New York.
EuroBank	San Juan	Puerto Rico.
RG Premier Bank of Puerto Rico	San Juan	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

Wilmington Trust of Pennsylvania	Wilmington	Delaware.
Chase Bank USA, N.A	New York	New York.
Allegiance Bank of North America	Bala Cynwyd	Pennsylvania.
First Keystone National Bank	Berwick	Pennsylvania.
American Eagle Savings Bank	Boothwyn	Pennsylvania.
Commerce Bank/Harrisburg, N.A	Camp Hill	Pennsylvania.
Croydon Savings Bank	Croydon	Pennsylvania.
FNB Bank, N.A	Danville	Pennsylvania.
Marquette Savings Bank	Erie	Pennsylvania.
First United National Bank	Fryburg	Pennsylvania.
Adams County National Bank	Gettysburg	Pennsylvania.
The First National Bank of Greencastle	Greencastle	Pennsylvania.
Huntingdon Savings Bank	Huntingdon	Pennsylvania.
Huntingdon Valley Bank	Huntingdon Valley	Pennsylvania.
First Commonwealth Bank	Indiana	Pennsylvania.
Abington Bank	Jenkintown	Pennsylvania.
The Merchants National Bank of Kittanning	Kittanning	Pennsylvania.
Fulton Bank	Lancaster	Pennsylvania.
BLC Bank, N.A	Lancaster	Pennsylvania.
The First National Bank of Lilly	Lilly	Pennsylvania.
The Citizens National Bank	Meyersdale	Pennsylvania.
Milton Savings Bank	Milton	Pennsylvania.
The Northumberland National Bank	Northumberland	Pennsylvania.
First National Bank of Palmerton	Palmerton	Pennsylvania.
Tioga Franklin Savings Bank	Philadelphia	Pennsylvania.
United Savings Bank	Philadelphia	Pennsylvania.
Fidelity Bank PaSb	Pittsburgh	Pennsylvania.
Landmark Community Bank	Pittston	Pennsylvania.
West Milton State Bank	West Milton	Pennsylvania.
CNB	Berkeley Springs	West Virginia.
Bank of Charles Town	Charles Town	West Virginia.
Davis Trust Company	Elkins	West Virginia.
Guaranty Bank & Trust Company	Huntington	West Virginia.
Capon Valley Bank	Wardensville	West Virginia.
Cornerstone Bank, Inc.	West Union	West Virginia.
The Citizens Bank of Weston, Inc.	Weston	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

First National Bank & Trust	Atmore	Alabama.
Regions Bank	Birmingham	Alabama.
Superior Bank	Birmingham	Alabama.
Farmers and Merchants Bank	Centre	Alabama.
Merchants & Farmers Bank of Greene County	Eutaw	Alabama.
First Lowndes Bank	Fort Deposit	Alabama.
First Metro Bank	Muscle Shoals	Alabama.
Farmers and Merchants Bank	Piedmont	Alabama.
West Alabama Bank & Trust	Reform	Alabama.
Bank Independent	Sheffield	Alabama.
First Southern State Bank	Stevenson	Alabama.
First National Bank of Central Alabama	Tuscaloosa	Alabama.
Turnberry Bank	Aventura	Florida.
Horizon Bank	Bradenton	Florida.
Riverside Bank of the Gulf Coast	Cape Coral	Florida.
Gulf State Community Bank	Carrabelle	Florida.
BAC Florida Bank	Coral Gables	Florida.
EuroBank	Coral Gables	Florida.
Englewood Bank	Englewood	Florida.
First Community Bank of Southwest Florida	Fort Myers	Florida.
Beach Community Bank	Fort Walton Beach	Florida.
First Bank and Trust Company of Indiantown	Indiantown	Florida.
Jacksonville Firemen's Credit Union	Jacksonville	Florida.
The Jacksonville Bank	Jacksonville	Florida.
Heritage Bank of Florida	Lutz	Florida.
Executive National Bank	Miami	Florida.
Sunshine State FS&L Association	Plant City	Florida.
Wheeler County State Bank	Alamo	Georgia.
Colony Bank Ashburn	Ashburn	Georgia.
The National Bank of Georgia	Athens	Georgia.
Capitol City Bank & Trust Company	Atlanta	Georgia.
Atlantic National Bank	Brunswick	Georgia.
Peoples Bank & Trust	Buford	Georgia.
United National Bank	Cairo	Georgia.
Bartow County Bank	Cartersville	Georgia.
PeoplesSouth Bank	Colquitt	Georgia.
Columbus Bank and Trust Company	Columbus	Georgia.
Bank of Dawson	Dawson	Georgia.
Bank of Terrell	Dawson	Georgia.
Farmers State Bank	Dublin	Georgia.
Heritage Bank	Jonesboro	Georgia.
Enterprise Banking Company	McDonough	Georgia.
Waycross Bank & Trust	Waycross	Georgia.
UnitedBank	Zebulon	Georgia.
The Harbor Bank of Maryland	Baltimore	Maryland.
Old Line Bank	Bowie	Maryland.
County First Bank	La Plata	Maryland.
Bank of Ocean City	Ocean City	Maryland.
Farmers and Merchants Bank	Upperco	Maryland.
Bank of America Georgia, NA	Charlotte	North Carolina.
New Century Bank	Dunn	North Carolina.
Four Oaks Bank & Trust Company	Four Oaks	North Carolina.
Bank of the Carolinas	Mocksville	North Carolina.
The Bank of Currituck	Moyock	North Carolina.
First-Citizens Bank & Trust Company	Raleigh	North Carolina.
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	North Carolina.
KS Bank, Incorporated	Smithfield	North Carolina.
Jackson Savings Bank, S.S.B	Sylva	North Carolina.
Tarboro Savings Bank, SSB	Tarboro	North Carolina.
Security Federal Bank	Aiken	South Carolina.
Bank of Anderson, National Association	Anderson	South Carolina.
Lowcountry National Bank	Beaufort	South Carolina.
CapitalBank	Greenwood	South Carolina.
Palmetto State Bank	Hampton	South Carolina.
Beach First National Bank	Myrtle Beach	South Carolina.
First National Bank of the South	Spartanburg	South Carolina.
Highlands Union Bank	Abingdon	Virginia.
The First Bank and Trust Company	Abingdon	Virginia.
Countrywide Bank, N.A	Alexandria	Virginia.
The First National Bank of Altavista	Altavista	Virginia.
Bank of Clarke County	Berryville	Virginia.
Bank of Floyd	Floyd	Virginia.
TruPoint Bank	Grundy	Virginia.
The Bank of Marion	Marion	Virginia.

Bank of Essex	Tappahannock	Virginia.
Resource Bank	Virginia Beach	Virginia.
The Fauquier Bank	Warrenton	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Town Square Bank, Inc	Ashland	Kentucky.
Auburn Banking Company	Auburn	Kentucky.
Peoples Exchange Bank	Beattyville	Kentucky.
Appalachian Peoples Federal Credit Union	Berea	Kentucky.
Farmers State Bank	Booneville	Kentucky.
American Bank & Trust Company, Inc	Bowling Green	Kentucky.
Citizens First Bank, Inc	Bowling Green	Kentucky.
The First National Bank of Brooksville	Brooksville	Kentucky.
Heritage Bank, Inc	Burlington	Kentucky.
Bank of Caneyville	Caneyville	Kentucky.
Bank of Corbin, Inc	Corbin	Kentucky.
Bank of Ohio County	Dundee	Kentucky.
Elkton Bank and Trust Company	Elkton	Kentucky.
Farmers Deposit Bank	Eminence	Kentucky.
The Bank of Kentucky	Florence	Kentucky.
First Federal Savings Bank of Frankfort	Frankfort	Kentucky.
The Commercial Bank of Grayson	Grayson	Kentucky.
The First National Bank of Grayson	Grayson	Kentucky.
Ohio Valley National Bank	Henderson	Kentucky.
Hyden Citizens Bank	Hyden	Kentucky.
Citizens Guaranty Bank	Irvine	Kentucky.
The First National Bank of Jackson	Jackson	Kentucky.
Citizens Bank & Trust Company of Jackson	Jackson	Kentucky.
Peoples Bank	Lebanon	Kentucky.
Lewisburg Banking Company	Lewisburg	Kentucky.
University of Kentucky Federal Credit Union	Lexington	Kentucky.
First National Bank and Trust	London	Kentucky.
Stock Yards Bank & Trust Company	Louisville	Kentucky.
The Peoples Bank	Marion	Kentucky.
Security Bank & Trust Company	Maysville	Kentucky.
The Citizens Bank	Morehead	Kentucky.
Citizens Bank of Northern Ky, Inc.	Newport	Kentucky.
First Farmers Bank & Trust Company	Owenton	Kentucky.
The Paducah Bank & Trust Company	Paducah	Kentucky.
Kentucky Bank	Paris	Kentucky.
Salyersville National Bank	Salyersville	Kentucky.
Citizens Union Bank of Shelbyville	Shelbyville	Kentucky.
Somerset National Bank	Somerset	Kentucky.
PBK Bank, Inc.	Stanford	Kentucky.
Bank of the Mountains	West Liberty	Kentucky.
Winchester Federal Savings Bank	Winchester	Kentucky.
North Akron Savings Bank	Akron	Ohio.
The Andover Bank	Andover	Ohio.
Sutton Bank	Attica	Ohio.
UnitedBank, N.A	Bucyrus	Ohio.
Farmers National Bank	Canfield	Ohio.
The Cincinnatus Savings & Loan Company	Cheviot	Ohio.
Foundation Bank	Cincinnati	Ohio.
The Union Bank Company	Columbus Grove	Ohio.
Heartland Federal Credit Union	Dayton	Ohio.
The State Bank and Trust Company	Defiance	Ohio.
Fremont Federal Credit Union	Fremont	Ohio.
The Ohio Valley Bank Company	Gallipolis	Ohio.
The Sycamore National Bank	Groesbeck	Ohio.
The Harrison Building and Loan Association	Harrison	Ohio.
Lebanon Citizens National Bank	Lebanon	Ohio.
Buckeye Community Bank	Lorain	Ohio.
The Lorain National Bank	Lorain	Ohio.
The Ohio State Bank	Marion	Ohio.
Minster Bank	Minster	Ohio.
The Mount Victory State Bank	Mount Victory	Ohio.
First National Bank of New Bremen	New Bremen	Ohio.
The Farmers State Bank	New Madison	Ohio.
Great Lakes Credit Union, Inc	Pennsyburg	Ohio.
Portage Community Bank	Ravenna	Ohio.
The Richwood Banking Company	Richwood	Ohio.
Sherwood State Bank	Sherwood	Ohio.
The First National Bank of Sycamore	Sycamore	Ohio.
First Bank of Ohio	Tiffin	Ohio.
The Citizens National Bank of Urbana	Urbana	Ohio.

The National Bank and Trust Company	Wilmington	Ohio.
Woodsfield Savings Bank	Woodsfield	Ohio.
Community B&T Company of Cheatham	Ashland City	Tennessee.
Citizens Bank & Trust Company	Atwood	Tennessee.
First South Bank	Bolivar	Tennessee.
Cornerstone Community Bank	Chattanooga	Tennessee.
Southern Heritage Bank	Cleveland	Tennessee.
The Community Bank of East Tennessee	Clinton	Tennessee.
First Alliance Bank	Cordova	Tennessee.
Tristar Bank	Dickson	Tennessee.
Fifth Third Bank, N.A	Franklin	Tennessee.
Tennessee Commerce Bank	Franklin	Tennessee.
Dupont Community Credit Union	Hixon	Tennessee.
The First National Bank of LaFollette	LaFollette	Tennessee.
Bank of Perry County	Lobelville	Tennessee.
Bank of Mason	Mason	Tennessee.
McKenzie Banking Company	McKenzie	Tennessee.
Security Federal Savings Bank	McMinnville	Tennessee.
Financial Federal Savings Bank	Memphis	Tennessee.
Tri-State Bank of Memphis	Memphis	Tennessee.
First Tennessee Bank NA	Memphis	Tennessee.
Pinnacle National Bank	Nashville	Tennessee.
Community Trust & Banking Company	Ooletewah	Tennessee.
Bank of Ripley	Ripley	Tennessee.
First Community Bank of East Tennessee	Rogersville	Tennessee.
The Citizens Bank of East Tennessee	Rogersville	Tennessee.
The Hardin County Bank	Savannah	Tennessee.
Peoples State Bank of Commerce	Trenton	Tennessee.
The Traders National Bank	Tullahoma	Tennessee.
First State Bank	Union City	Tennessee.
Wayne County Bank	Waynesboro	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Company	Attica	Indiana.
Hoosier Hills Credit Union	Bedford	Indiana.
Bloomfield State Bank	Bloomfield	Indiana.
Indiana University Employees Federal Credit Union	Bloomington	Indiana.
Wayne Bank and Trust Company	Cambridge City	Indiana.
Chiphone Federal Credit Union	Elkhart	Indiana.
MidWest America Federal Credit Union	Fort Wayne	Indiana.
Fire Police City County Federal Credit Union	Fort Wayne	Indiana.
Alliance Bank	Francesville	Indiana.
Friendship State Bank	Friendship	Indiana.
Lafayette Bank & Trust Company, NA	Lafayette	Indiana.
Lynnville National Bank	Lynnville	Indiana.
Citizens State Bank	New Castle	Indiana.
Notre Dame Federal Credit Union	Notre Dame	Indiana.
First Federal Savings Bank	Rochester	Indiana.
1st Source Bank	South Bend	Indiana.
First National Bank, Valparaiso	Valparaiso	Indiana.
Centre Bank	Veedersburg	Indiana.
The Merchants Bank & Trust Company	West Harrison	Indiana.
Centier Bank	Whiting	Indiana.
Chelsea State Bank	Chelsea	Michigan.
Southern Michigan Bank and Trust	Coldwater	Michigan.
Century Bank and Trust	Coldwater	Michigan.
First State Bank	Decatur	Michigan.
Baybank	Gladstone	Michigan.
Founders Bank & Trust	Grand Rapids	Michigan.
Independent Bank—West Michigan	Grand Rapids	Michigan.
West Michigan Community Bank	Hudsonville	Michigan.
The Miners State Bank of Iron River	Iron River	Michigan.
Peninsula Bank	Ishpeming	Michigan.
Kent Commerce Bank	Kentwood	Michigan.
West Shore Bank	Ludington	Michigan.
Dart Bank	Mason	Michigan.
Citizens State Bank	New Baltimore	Michigan.
OSB Community Bank	Onsted	Michigan.
Oxford Bank	Oxford	Michigan.
The Bank of Northern Michigan	Petoskey	Michigan.
Old Mission Bank	Sault Saint Marie	Michigan.
FirstBank—St. Johns	St. Johns	Michigan.
Warren Bank	Warren	Michigan.

Federal Home Loan Bank of Chicago—District 7

Benchmark Bank	Aurora	Illinois.
Old Second National Bank	Aurora	Illinois.
Tompkins State Bank	Avon	Illinois.
Beardstown Savings s.b	Beardstown	Illinois.
Citizens Community Bank of Illinois	Berwyn	Illinois.
Great Lakes Bank, National Association	Blue Island	Illinois.
Brimfield Bank	Brimfield	Illinois.
Marine Bank and Trust	Carthage	Illinois.
Buena Vista National Bank	Chester	Illinois.
Chester National Bank	Chester	Illinois.
Park National Bank	Chicago	Illinois.
Lakeside Bank	Chicago	Illinois.
The Northern Trust Company	Chicago	Illinois.
Pacific Global Bank	Chicago	Illinois.
State Bank of Chrisman	Chrisman	Illinois.
Republic Bank of Chicago	Darien	Illinois.
The First National Bank of Dieterich	Dieterich	Illinois.
First State Bank of Dix	Dix	Illinois.
Citizens Bank of Edinburg	Edinburg	Illinois.
TheBank of Edwardsville	Edwardsville	Illinois.
First State Bank of Eldorado	Eldorado	Illinois.
Elgin State Bank	Elgin	Illinois.
Advantage National Bank	Elk Grove Village	Illinois.
First Bank & Trust	Evanston	Illinois.
Fairfield National Bank	Fairfield	Illinois.
Flora Savings Bank	Flora	Illinois.
Farmers and Mechanics Bank	Galesburg	Illinois.
Glasford State Bank	Glasford	Illinois.
Heritage Community Bank	Glenwood	Illinois.
Goodfield State Bank	Goodfield	Illinois.
Farmers National Bank of Griggsville	Griggsville	Illinois.
Clay County State Bank	Louisville	Illinois.
HomeStar Bank	Manteno	Illinois.
First Federal Savings Bank of Mascoutah	Mascoutah	Illinois.
First Federal Savings & Loan Association of Mattoon	Mattoon	Illinois.
Morton Community Bank	Morton	Illinois.
The First National Bank of Mt. Pulaski	Mt. Pulaski	Illinois.
TrustBank	Olney	Illinois.
First Federal Savings Bank	Ottawa	Illinois.
First Bank and Trust, s.b	Paris	Illinois.
Corn Belt Bank & Trust Company	Pittsfield	Illinois.
Bank of Rantoul	Rantoul	Illinois.
The First National Bank & Trust Company	Rochelle	Illinois.
Northwest Bank of Rockford	Rockford	Illinois.
1st Community Bank	Sherrard	Illinois.
Independent Bankers' Bank	Springfield	Illinois.
Sterling Federal Bank, F.S.B	Sterling	Illinois.
Streator Home Building and Loan Association	Streator	Illinois.
First National Bank	Sullivan	Illinois.
Savanna-Thomson State Bank	Thomson	Illinois.
Tempo Bank, A FSB	Trenton	Illinois.
Heritage Bank of Central Illinois	Trivoli	Illinois.
Iroquois Federal Savings and Loan Association	Watseka	Illinois.
Main Source Bank	Watseka	Illinois.
NorStates Bank	Waukegan	Illinois.
Wemple State Bank	Waverly	Illinois.
State Bank of Illinois	West Chicago	Illinois.
Sterling Bank	Barron	Wisconsin.
RidgeStone Bank	Brookfield	Wisconsin.
First Banking Center	Burlington	Wisconsin.
Cambridge State Bank	Cambridge	Wisconsin.
Community Bank of Cameron	Cameron	Wisconsin.
Community Bank of Central Wisconsin	Colby	Wisconsin.
DMB Community Bank	DeForest	Wisconsin.
Community Bank Delavan	Delavan	Wisconsin.
Royal Credit Union	Eau Claire	Wisconsin.
Charter Bank Eau Claire	Eau Claire	Wisconsin.
Grand Marsh State Bank	Grand Marsh	Wisconsin.
Hartford Savings Bank	Hartford	Wisconsin.
Farmers State Bank	Hillsboro	Wisconsin.
Citizens State Bank	Hudson	Wisconsin.
The Bank of Kaukauna	Kaukauna	Wisconsin.
First National Bank in Manitowoc	Manitowoc	Wisconsin.
Investors Community Bank	Manitowoc	Wisconsin.

Farmers & Merchants Bank and Trust	Marinette	Wisconsin.
The Stephenson National Bank & Trust	Marinette	Wisconsin.
Marshfield Savings Bank	Marshfield	Wisconsin.
Mayville Savings Bank	Mayville	Wisconsin.
McFarland State Bank	McFarland	Wisconsin.
Lincoln County Bank	Merrill	Wisconsin.
North Milwaukee State Bank	Milwaukee	Wisconsin.
Monona State Bank	Monona	Wisconsin.
First National Bank of Niagara	Niagara	Wisconsin.
Oostburg State Bank	Oostburg	Wisconsin.
United Bank	Osseo	Wisconsin.
Pigeon Falls State Bank	Pigeon Falls	Wisconsin.
Port Washington State Bank	Port Washington	Wisconsin.
Peoples State Bank	Prairie du Chien	Wisconsin.
Bank of Prairie du Sac	Prairie du Sac	Wisconsin.
Community State Bank of Prentice	Prentice	Wisconsin.
Community First Bank	Rosholt	Wisconsin.
Evergreen State Bank	Stoughton	Wisconsin.
Stratford State Bank	Stratford	Wisconsin.
Bank of Turtle Lake	Turtle Lake	Wisconsin.
First National Bank	Waupaca	Wisconsin.
People's State Bank	Wausau	Wisconsin.
State Bank of Withee	Withee	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

First National Bank of Akron (The)	Akron	Iowa.
First Iowa State Bank	Albia	Iowa.
Farmers State Bank	Algona	Iowa.
Ames Community Bank	Ames	Iowa.
Rolling Hills Bank & Trust	Atlantic	Iowa.
Benton County State Bank	Blairstown	Iowa.
First State Bank	Britt	Iowa.
Patriot Bank	Brooklyn	Iowa.
Farmers & Merchant Bank & Trust	Burlington	Iowa.
Carroll County State Bank	Carroll	Iowa.
Tri-County Bank & Trust	Cascade	Iowa.
Center Point Bank & Trust Company	Center Point	Iowa.
Iowa State Bank	Clarksville	Iowa.
Clinton National Bank	Clinton	Iowa.
Citizens First Bank	Clinton	Iowa.
Great Western Bank	Clive	Iowa.
First State Bank of Colfax	Colfax	Iowa.
Frontier Savings Bank	Council Bluffs	Iowa.
Northwest Bank and Trust Company	Davenport	Iowa.
Viking State Bank & Trust	Decorah	Iowa.
Defiance State Bank	Defiance	Iowa.
Bankers Trust Company, N.A	Des Moines	Iowa.
First Central State Bank	DeWitt	Iowa.
American Trust & Savings Bank	Dubuque	Iowa.
Du Trac Community Credit Union	Dubuque	Iowa.
Emmet County State Bank	Estherville	Iowa.
First Security State Bank	Evansdale	Iowa.
Manufacturers Bank & Trust Company	Forest City	Iowa.
The Garnavillo Savings Bank	Garnavillo	Iowa.
Union State Bank	Greenfield	Iowa.
Heritage Bank, N.A	Holstien	Iowa.
Iowa State Bank	Hull	Iowa.
United Bank of Iowa	Ida Grove	Iowa.
University of Iowa Community Credit Union	Iowa City	Iowa.
Iowa State Bank & Trust Company	Iowa City	Iowa.
Community Choice Credit Union	Johnston	Iowa.
Primebank	Le Mars	Iowa.
Luana Savings Bank	Luana	Iowa.
Central State Bank	Muscatine	Iowa.
MidwestOne Bank & Trust	Oskaloosa	Iowa.
Pioneer Bank	Sergeant Bluff	Iowa.
Bank Iowa	Shenandoah	Iowa.
Central Bank	Storm Lake	Iowa.
First State Bank	Stuart	Iowa.
American Savings Bank	Tripoli	Iowa.
West Bank	West Des Moines	Iowa.
Farmers Trust & Savings Bank	Williamsburg	Iowa.
Adrian State Bank	Adrian	Minnesota.
Security State Bank	Aitkin	Minnesota.
Annandale State Bank	Annandale	Minnesota.

First National Bank	Bagley	Minnesota.
The First National Bank of Battle Lake	Battle Lake	Minnesota.
State Bank of Belle Plaine	Belle Plaine	Minnesota.
First Federal Bank	Bemidji	Minnesota.
Security Bank USA	Bemidji	Minnesota.
Concorde Bank	Blomkest	Minnesota.
Bonanza Valley State Bank	Brooten	Minnesota.
CenBank	Buffalo Lake	Minnesota.
Root River State Bank	Chatfield	Minnesota.
Community Bank of the Red River Valley	East Grand Forks	Minnesota.
First National Bank of Elk River	Elk River	Minnesota.
The Bank of Elk River	Elk River	Minnesota.
Boundary Waters Bank	Ely	Minnesota.
Elysian Bank	Elysian	Minnesota.
Anchor Bank Farmington, N.A	Farmington	Minnesota.
Security State Bank of Fergus Falls	Fergus Falls	Minnesota.
Northview Bank	Finlayson	Minnesota.
State Bank of Gibbon	Gibbon	Minnesota.
Grand Marais State Bank	Grand Marais	Minnesota.
Grand Rapids State Bank	Grand Rapids	Minnesota.
State Bank of Hawley	Hawley	Minnesota.
First National Bank	Hawley	Minnesota
1st National Bank of Herman	Herman	Minnesota.
Security State Bank of Hibbing	Hibbing	Minnesota.
Woodlands National Bank	Hinckley	Minnesota.
Stearns Bank Holdingford National Association	Holdingford	Minnesota.
Eastwood Bank	Kasson	Minnesota.
American Alliance Bank	Lake City	Minnesota.
Farmers State Bank of Madelia, Inc	Madelia	Minnesota.
Pioneer Bank	Mapleton	Minnesota.
Grand Timber Bank	McGregor	Minnesota.
Kanabec State Bank	Mora	Minnesota.
Farmers & Merchants State Bank of New York Mills, Inc	New York Mills	Minnesota.
Valley Bank	North Mankato	Minnesota.
HomeTown Bank	Redwood Falls	Minnesota.
First National Bank of the North	Sandstone	Minnesota.
First National Bank of Sauk Centre	Sauk Centre	Minnesota.
Stearns Bank N.A	St. Cloud	Minnesota.
The Lake Bank	Two Harbors	Minnesota.
Stearns Bank of Upsala National Association	Upsala	Minnesota.
Mid-Central Federal Savings Bank	Wadena	Minnesota.
First National Bank of Waseca	Waseca	Minnesota.
United Security Bank	Auxvasse	Missouri.
County Bank	Brunswick	Missouri.
Mainstreet Bank	Buceton	Missouri.
Farmers State Bank	Cameron	Missouri.
Hometown Bank, N.A	Carthage	Missouri.
First State Bank and Trust Company, Inc	Caruthersville	Missouri.
Citizens Bank of Charleston	Charleston	Missouri.
Citizens Bank and Trust Company	Chillicothe	Missouri.
First National Bank of Clinton	Clinton	Missouri.
Community Bank of El Dorado Springs	El Dorado Springs	Missouri.
First Bank of Missouri	Gladstone	Missouri.
Bank of Holden	Holden	Missouri.
Hume Bank	Hume	Missouri.
Unico Bank	Irondale	Missouri.
Home Savings Bank	Jefferson City	Missouri.
First State Bank of Joplin	Joplin	Missouri.
Commerce Bank, N.A	Kansas City	Missouri.
Bank of Lee's Summit	Lee's Summit	Missouri.
The Farmers Bank of Lincoln	Lincoln	Missouri.
Community Bank & Trust	Neosho	Missouri.
Citizens Bank	New Haven	Missouri.
Bank Star	Pacific	Missouri.
The Paris National Bank	Paris	Missouri.
Bank Star of the LeadBelt	Park Hills	Missouri.
Phelps County Bank	Rolla	Missouri.
Systematic Savings and Loan Association	Springfield	Missouri.
Farmers & Merchants Bank	St. Clair	Missouri.
Heartland Bank	St. Louis	Missouri.
McIntosh County Bank	Ashley	North Dakota.
First Security Bank—West	Beulah	North Dakota.
Dakota Western Bank	Bowman	North Dakota.
First State Bank	Buxton	North Dakota.
United Valley Bank	Cavalier	North Dakota.
Western State Bank	Devils Lake	North Dakota.

Union State Bank of Hazen	Hazen	North Dakota.
Commercial Bank of Mott	Mott	North Dakota.
First National Bank & Trust Company of Williston	Williston	North Dakota.
Citizens State Bank of Arlington	Arlington	South Dakota.
First State Bank	Armour	South Dakota.
DNB National Bank	Clear Lake	South Dakota.
Langford State Bank	Langford	South Dakota.
Sunrise Bank Dakota	Onida	South Dakota.

Federal Home Loan Bank of Dallas—District 9

First Western Bank	Booneville	Arkansas.
Chambers Bank	Danville	Arkansas.
Decatur State Bank	Decatur	Arkansas.
First State Bank of DeQueen	DeQueen	Arkansas.
Timberland Bank	El Dorado	Arkansas.
Bank of Fayetteville	Fayetteville	Arkansas.
Signature Bank of Arkansas	Fayetteville	Arkansas.
First Service Bank	Greenbrier	Arkansas.
Farmers Bank	Hamburg	Arkansas.
Heritage Bank	Jonesboro	Arkansas.
Eagle Bank & Trust	Little Rock	Arkansas.
Parkway Bank	Portland	Arkansas.
First State Bank	Russellville	Arkansas.
The First National Bank of Wynne	Wynne	Arkansas.
Peoples Bank of Louisiana	Amite	Louisiana.
Landmark Bank	Clinton	Louisiana.
Caldwell Bank and Trust Company	Columbia	Louisiana.
Tri-Parish Bank	Eunice	Louisiana.
Gibsland Bank & Trust Company	Gibsland	Louisiana.
Bank of Jena	Jena	Louisiana.
MidSouth Bank N.A	Lafayette	Louisiana.
South Lafourche Bank & Trust Company	Larose	Louisiana.
Merchants & Farmers Bank & Trust Company	Leesville	Louisiana.
Resource Bank	Mandeville	Louisiana.
Omni Bank	Metairie	Louisiana.
Bank of Montgomery	Montgomery	Louisiana.
Community First Bank	New Iberia	Louisiana.
United Bank & Trust Company	New Orleans	Louisiana.
Gulf Coast Bank & Trust Company	New Orleans	Louisiana.
St. Landry Homestead	Opelousas	Louisiana.
Community Bank	Raceland	Louisiana.
First American Bank and Trust Company	Vacherie	Louisiana.
First Federal Savings and Loan	Aberdeen	Mississippi.
Farmers and Merchants Bank	Baldwyn	Mississippi.
Copiah Bank N.A	Hazlehurst	Mississippi.
Planters Bank & Trust Company	Indianola	Mississippi.
First American National Bank	Iuka	Mississippi.
Citizens Bank & Trust Company of Marks	Marks	Mississippi.
Pike National Bank	McComb	Mississippi.
United Mississippi Bank	Natchez	Mississippi.
Western Bank	Alamogordo	New Mexico.
Bank of Albuquerque N.A	Albuquerque	New Mexico.
Western Bank	Artesia	New Mexico.
Western Commerce Bank	Carlsbad	New Mexico.
Citizens Bank	Farmington	New Mexico.
Los Alamos National Bank	Los Alamos	New Mexico.
The James Polk Store National Bank	Portales	New Mexico.
Citizens Bank N.A	Abilene	Texas.
Bank of Commerce	Amarillo	Texas.
Anahuac National Bank	Anahuac	Texas.
First Bank	Azle	Texas.
First National Bank of Baird	Baird	Texas.
The First National Bank of Ballinger	Ballinger	Texas.
First National Bank Mid-Cities	Bedford	Texas.
The Blanco National Bank	Blanco	Texas.
Legend Bank N.A	Bowie	Texas.
The Commercial National Bank of Brady	Brady	Texas.
First State Bank—Bremond, S.S.B	Bremond	Texas.
First National Bank in Bronte	Bronte	Texas.
First Bank	Burkburnett	Texas.
First State Bank & Trust Company	Carthage	Texas.
Corsicana National Bank & Trust	Corsicana	Texas.
Stockmens National Bank	Cotulla	Texas.
Signature Bank	Dallas	Texas.
State Bank of Texas	Dallas	Texas.

Bank of Texas, N.A	Dallas	Texas.
Pavillion Bank	Dallas	Texas.
Amistad Bank	Del Rio	Texas.
Northstar Bank of Texas	Denton	Texas.
First Bank & Trust East Texas	Diboll	Texas.
The First National Bank of Eagle Lake	Eagle Lake	Texas.
NewFirst National Bank	El Campo	Texas.
The First National Bank of Emory	Emory	Texas.
Enloe State Bank	Enloe	Texas.
Greater South Texas Bank, FSB	Falfurrias	Texas.
Pecos County State Bank	Fort Stockton	Texas.
Worth National Bank	Fort Worth	Texas.
Security State Bank and Trust	Fredericksburg	Texas.
First State Bank	Gainesville	Texas.
Moody National Bank	Galveston	Texas.
First National Bank	George West	Texas.
First National Bank of Giddings	Giddings	Texas.
Mills County State Bank	Goldthwaite	Texas.
First State Bank	Graham	Texas.
Farmers State Bank	Groesbeck	Texas.
United Community Bank, N.A.	Highland Village	Texas.
The Hondo National Bank	Hondo	Texas.
Preferred Bank, FSB	Houston	Texas.
North Houston Bank	Houston	Texas.
Sterling Bank	Houston	Texas.
Huntington State Bank	Huntington	Texas.
State National Bank of Texas	Iowa Park	Texas.
TIB—The Independent Bankers Bank	Irving	Texas.
Jacksboro National Bank	Jacksboro	Texas.
Texas National Bank	Jacksonville	Texas.
First Liberty National Bank	Liberty	Texas.
MyLubbockBank	Lubbock	Texas.
USAA Federal Savings Bank	San Antonio	Texas.
Sanderson State Bank	Sanderson	Texas.
First Bank of Snook	Snook	Texas.
First National Bank of Trenton	Trenton	Texas.
Uvalde National Bank	Uvalde	Texas.
Independent Bank	Waco	Texas.
Central National Bank	Waco	Texas.
Wallis State Bank	Wallis	Texas.

Federal Home Loan Bank of Topeka—District 10

First National Bank of Colorado	Boulder	Colorado.
FirstBank of Boulder	Boulder	Colorado.
FirstBank of Breckenridge	Breckenridge	Colorado.
Coiz Bank, N.A	Denver	Colorado.
First National Bank of Estes Park	Estes Park	Colorado.
FirstBank of Northern Colorado	Fort Collins	Colorado.
Centennial Bank of the West	Fort Collins	Colorado.
Union Colony Bank	Greeley	Colorado.
FirstBank of Tech Center	Greenwood Village	Colorado.
The Gunnison Bank and Trust Company	Gunnison	Colorado.
Red Rocks Federal Credit Union	Highlands Ranch	Colorado.
Equitable Savings and Loan Association	Sterling	Colorado.
FirstBank North	Westminster	Colorado.
Legacy Bank	Wiley	Colorado.
Stockgrowers State Bank of Ashland	Ashland	Kansas.
Mid America Bank	Baldwin City	Kansas.
American Bank	Baxter Springs	Kansas.
Bendena State Bank	Bendena	Kansas.
Citizens State Bank	Cheney	Kansas.
The Citizens National Bank	Concordia	Kansas.
The First National Bank of Cunningham	Cunningham	Kansas.
State Bank of Downs	Downs	Kansas.
Garden City State Bank	Garden City	Kansas.
First Kansas Bank & Trust Company	Gardner	Kansas.
The First National Bank of Girard	Girard	Kansas.
First National Bank	Goodland	Kansas.
American State Bank & Trust Company, NA	Great Bend	Kansas.
The First State Bank of Healy	Healy	Kansas.
Farmers and Merchants Bank	Hill City	Kansas.
Hillsboro State Bank	Hillsboro	Kansas.
Hoisington National Bank	Hoisington	Kansas.
First National Bank of Holcomb	Holcomb	Kansas.
Denison State Bank	Holton	Kansas.

Howard State Bank	Howard	Kansas.
The Jamestown State Bank	Jamestown	Kansas.
Nekoma State Bank	La Crosse	Kansas.
First State Bank & Trust Company	Larned	Kansas.
Lawrence Bank	Lawrence	Kansas.
The State Bank of Lebo	Lebo	Kansas.
First National Bank of Liberal	Liberal	Kansas.
Lyons Federal Savings	Lyons	Kansas.
The Morrill & Janes Bank and Trust Company	Merriam	Kansas.
Sunflower Bank, N.A	Salina	Kansas.
St. Marys State Bank	St. Marys	Kansas.
Emprise Bank	Wichita	Kansas.
Adams State Bank	Adams	Nebraska.
Heartland Community Bank	Bennet	Nebraska.
First National Bank of Chadron	Chadron	Nebraska.
Bank of Clarks	Clarks	Nebraska.
Citizens State Bank	Clearwater	Nebraska.
Farmers Bank of Cook	Cook	Nebraska.
Farmers State Bank	Dodge	Nebraska.
Filley Bank	Filley	Nebraska.
Valley Bank and Trust Company	Gering	Nebraska.
First National Bank of Gordon	Gordon	Nebraska.
Hastings State Bank	Hastings	Nebraska.
Security National Bank	Laurel	Nebraska.
American National Bank	Omaha	Nebraska.
Security First Bank	Sidney	Nebraska.
Iowa—Nebraska State Bank	South Sioux City	Nebraska.
Wahoo State Bank	Wahoo	Nebraska.
Citizens Bank & Trust Company	Ardmore	Oklahoma.
Peoples State Bank	Blair	Oklahoma.
1st Bank & Trust	Broken Bow	Oklahoma.
First Bank of Chandler	Chandler	Oklahoma.
Union Bank of Chandler	Chandler	Oklahoma.
The First National Bank of Coweta	Coweta	Oklahoma.
First National Bank of Davis	Davis	Oklahoma.
Great Plains National Bank	Elk City	Oklahoma.
First Capital Bank	Guthrie	Oklahoma.
The Idabel National Bank	Idabel	Oklahoma.
Bank of Locust Grove	Locust Grove	Oklahoma.
The Bank, National Association	McAlester	Oklahoma.
The Grant County Bank	Medford	Oklahoma.
First National Bank	Midwest City	Oklahoma.
All America Bank	Mustang	Oklahoma.
Quail Creek Bank, N.A	Oklahoma City	Oklahoma.
Coppermark Bank	Oklahoma City	Oklahoma.
Frontier State Bank	Oklahoma City	Oklahoma.
The Community State Bank	Poteau	Oklahoma.
The Exchange Bank	Skiatook	Oklahoma.
First National Bank of Stigler	Stigler	Oklahoma.
Stroud National Bank	Stroud	Oklahoma.
Tulsa National Bank	Tulsa	Oklahoma.
Bank of Oklahoma, NA	Tulsa	Oklahoma.
Waurika National Bank	Waurika	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

National Bank of Arizona	Phoenix	Arizona.
First California Bank	Camarillo	California.
Tri Counties Bank	Chico	California.
First Northern Bank of Dixon	Dixon	California.
First National Bank of North County	Lake San Marcos	California.
Hanmi Bank	Los Angeles	California.
Manufacturers Bank	Los Angeles	California.
World Savings Bank, FSB	Oakland	California.
Kaiperm Federal Credit Union	Oakland	California.
Citizens Business Bank	Ontario	California.
First Security Thrift Company	Orange	California.
LA Financial Federal Credit Union	Pasadena	California.
Bank of the Sierra	Porterville	California.
Plumas Bank	Quincy	California.
Inland Empire National Bank	Riverside	California.
American River Bank	Sacramento	California.
Mission Federal Credit Union	San Diego	California.
North Island Financial Credit Union	San Diego	California.
America California Bank	San Francisco	California.
First National Bank of Nevada	Reno	Nevada.

Federal Home Loan Bank of Seattle—District 12		
Alaska USA Federal Credit Union	Anchorage	Alaska.
Alaska Pacific Bank	Juneau	Alaska.
First Hawaiian Bank	Honolulu	Hawaii.
Hawaii National Bank	Honolulu	Hawaii.
West Oahu Community Federal Credit Union	Kapolei	Hawaii.
Idaho Independent Bank	Coeur D'Alene	Idaho.
Bank of Idaho	Idaho Falls	Idaho.
Belt Valley Bank	Belt	Montana.
Flathead Bank	Bigfork	Montana.
First Boulder Valley Bank	Boulder	Montana.
First Madison Valley Bank	Ennis	Montana.
Yellowstone Bank	Laurel	Montana.
Montana State Bank	Plentywood	Montana.
Valley Bank of Ronan	Ronan	Montana.
Citizens Bank	Corvallis	Oregon.
Oregon Community Credit Union	Eugene	Oregon.
Oregon Pacific Banking Company	Florence	Oregon.
Home Valley Bank	Grants Pass	Oregon.
Southern Oregon Federal Credit Union	Grants Pass	Oregon.
Town Center Bank	Portland	Oregon.
Williamette Valley Bank	Salem	Oregon.
Silver Falls Bank	Salem	Oregon.
St. Helens Community Federal Credit Union	St. Helens	Oregon.
State Bank of Southern Utah	Cedar City	Utah.
America West Bank	Layton	Utah.
Central Bank	Provo	Utah.
Far West Bank	Provo	Utah.
Liberty Bank	Salt Lake City	Utah.
Foundation Bank	Bellevue	Washington.
First Mutual Bank	Bellevue	Washington.
Westsound Bank	Bremerton	Washington.
Coastal Community Bank	Everett	Washington.
Frontier Bank	Everett	Washington.
ShoreBank Pacific	Ilwaco	Washington.
Twin City Bank	Longview	Washington.
City Bank	Lynnwood	Washington.
Golf Savings Bank	Mountlake Terrace	Washington.
School Employees Credit Union of Washington	Seattle	Washington.
Washington Trust Bank	Spokane	Washington.
Numerica Credit Union	Spokane	Washington.
State Bank Northwest	Spokane Valley	Washington.
Pierce Commercial Bank	Tacoma	Washington.
Harborstone Credit Union	Tacoma	Washington.
Columbia State Bank	Tacoma	Washington.
Westside Community Bank	University Place	Washington.
Baker Boyer National Bank	Walla Walla	Washington.
First National Bank of Buffalo	Buffalo	Wyoming.
Wyoming Bank & Trust	Cheyenne	Wyoming.
The Jackson State Bank & Trust	Jackson	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before the January 25, 2008, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2006–07 eighth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2006–07 eighth quarter review cycle must be delivered to the Finance Board on or before the February 29, 2008 deadline for submission of Community Support Statements.

Dated: December 20, 2007.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. 08–3 Filed 1–10–08; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hodgson Family, consisting of Richard M. Hodgson, Richard M. Hodgson II, Elizabeth M. Hodgson, and Laurie L. Hodgson all of Charlevoix, Michigan; Eric J. Hodgson, Beaver Island, Michigan and Mark E. Hodgson of Fox Point, Wisconsin; to retain voting shares of Charlevoix First Corporation, Charlevoix, Michigan, and thereby indirectly retain voting shares of Charlevoix State Bank, Charlevoix, Michigan.

Board of Governors of the Federal Reserve System, January 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–317 Filed 1–10–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hodgson Family, consisting of Richard M. Hodgson, Richard M. Hodgson II, Elizabeth M. Hodgson, and Laurie L. Hodgson all of Charlevoix, Michigan; Eric J. Hodgson, Beaver Island, Michigan and Mark E. Hodgson of Fox Point, Wisconsin; to retain voting shares of Charlevoix First Corporation, Charlevoix, Michigan, and thereby indirectly retain voting shares of Charlevoix State Bank, Charlevoix, Michigan.

Board of Governors of the Federal Reserve System, January 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–319 Filed 1–10–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 February 6, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Luana Bancorporation, Luana, Iowa; to acquire 100 percent of First State Bank Iowa, New Hampton, Iowa.

Board of Governors of the Federal Reserve System, January 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–318 Filed 1–10–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Luana Bancorporation, Luana, Iowa; to acquire 100 percent of First State Bank Iowa, New Hampton, Iowa.

Board of Governors of the Federal Reserve System, January 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–320 Filed 1–10–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/17/2007			
20080293	United Stationers, Inc	Brazos Equity Fund II, LP	ORS Nasco Holding, Inc.
20080322	Rudolph Technologies, Inc	Applied Precision Holdings, LLC	Applied Precision Holdings, LLC.
20080327	Live Nation, Inc	Mr. Dell R. Furano	Signatures SNI, Inc.
20080332	American Industrial Partners Capital Fund IV, L.P.	Emerson Electric Co	Brooks Instrument B.V.; Emerson Electric Co.; Emerson Electric Korea Ltd.; Emerson Japan Ltd.; Emerson Process Management Magyarorszag Kft; Mobrey S.A.
20080374	Sun Capital Partners V, L.P	Darden Restaurants, Inc	GMRI, Inc; GMR Restaurants of Pennsylvania, Inc.; Smokey Bones LLC.
20080380	Knology, Inc	C. Christopher Dupree	Graceba Total Communications, Inc.
20080383	William Sauder	Pope & Talbot, Inc	Pope & Talbot, Inc.; Pope & Talbot Ltd.; Pope & Talbot Lumber Sales, Inc.; Pope & Talbot Spearfish Limited Partnership.
20080385	Sanofi-Aventis	Regeneron Pharmaceuticals, Inc	Regeneron Pharmaceuticals, Inc.
20080387	Valitas Equity LLC	Madison Dearborn Capital Partners, LP.	Valitas Health Services, Inc.
20080389	General Electric Company	Southwestern Energy Company	Arkansas Western Gas Company.
20080396	Versa Capital Fund I, LP	InPhonic, Inc	InPhonic, Inc.
20080397	Nirma Limited	Sun Capital Partners III QP, LP	Searles Valley Minerals Inc.; Searles Valley Minerals Operations Inc.
20080406	MarkWest Energy Partners, LP	MarkWest Hydrocarbon, Inc	MarkWest Hydrocarbon, Inc.
Transactions Granted Early Termination—12/18/2007			
20080336	Getinge AB	Boston Scientific Corporation	AFx LLC; CardioThoracic Systems LLC; Origin Medsystems LLC.
20080337	Trian Star Trust	The Cheesecake Factory Incorporated.	The Cheesecake Factory Incorporated.
20080355	Inverness Medical Innovations, Inc	ParadigmHealth, Inc	ParadigmHealth, Inc.
20080407	Odyssey Investment Partners Fund III, LP.	American Capital Strategies, Ltd	Ranpak Inc.
Transactions Granted Early Termination—12/19/2007			
20080299	Deffenbaugh Disposal, Inc	The Ronald D. Deffenbaugh Irrevocable Trust of 2007.	Deffenbaugh Industries, Inc.
20080357	GCA Holdings Corporation	Savvian, LLC	Savvian, LLC.
20080399	Motorola, Inc	Vertex Standard Co. Ltd	Vertex Standard Co. Ltd.
20080401	Borse Dubai Limited	The Nasdaq Stock Market, Inc	The Nasdaq Stock Market, Inc.
20080405	C.R. Bard, Inc	Edwards Lifesciences Corporation	Edwards Lifesciences A.G.; Edwards Lifesciences LLC.
20080410	Littlejohn Fund II, LP	Rodney P. Hunt	RS Information Systems, LLC.
Transactions Granted Early Termination—12/20/2007			
20071179	Google Inc	Hellman & Friedman Capital Partners V, LP.	Click Holding Corp.
20071755	Barry Diller	Paciolan, Inc	Paciolan, Inc.
20080339	VT Group plc	AEPCO, Inc	AEPCO, Inc.
20080341	Donata Holding SE	Kelso Investment Associates VII, LP	DLI Holding Corp.
20080384	KS Vista Trust	KGen Power Corporation	KGen Power Corporation.
20080390	Robert J. Schlegel	Melton L. Bacon	AAA Manufacturing Stone, Inc.; Colorado Stone Products of Texas, Inc.; Creative Stone Mfg., Inc.; Desert Pumice, Inc.

Trans #	Acquiring	Acquired	Entities
20080419	GTCR Fund IX/A, LP	Dubai Aerospace Enterprise (DAE) Ltd.	Corporate Jets, Inc.; Piedmont Hawthorne Aviation, LLC; Piedmont/Hawthorne Canada, Inc.
Transactions Granted Early Termination—12/21/2007			
20080324	Leeds Equity Partners IV, LP	GTCO Corporation	GTCO Corporation.
20080400	The Nasdaq Stock Market, Inc	Philadelphia Stock Exchange, Inc	Philadelphia Stock Exchange, Inc.
20080414	Macquarie Group Limited	Edward Barlow	Chesapeake Publishing Corporation.
20080416	Gary Segal	WDF Services Corporation	WDF Services Corporation.
20080426	Wendel Investissement	WESCO International, Inc	LADD Industries, LLC.
20080427	Regency Energy Partners, LP	Carlyle/Riverstone CDM Corp. Holdings II, LLC.	CDM Resource Management, Ltd.
20080429	AT&T Inc	Harbor Wireless, LLC	Harbor Wireless, LLC.
20080432	Liberty Media Corporation	Milestone Partners II, LP	Bodybuilding.com, LLC.; Higher Power Nutrition Common Holdings, LLC.
20080437	Light Tower Holdings LLC	Quadrangle Capital Partners LP	DataNet Communications Group, Inc.
20080442	Halyard Capital Fund II, LP	2000 Riverside Capital Appreciation Fund, LP.	HCPro Holdings, Inc.
20080443	AT&T Inc	Edge Wireless Holding Company, LLC.	Edge Wireless, LLC.
20080446	Tangent Fund Shareholders Trust	Weatherford International Ltd	Weatherford International Ltd.
20080451	Regency Energy Partners LP	General Electric Company	FrontStreet Hugoton, LLC.
20080456	SUPERVALU Inc	Albertson's LLC	ABS RM Investor LLC.; ABS RM Lease Investor LLC.; Albertson's LLC.
Transactions Granted Early Termination—12/26/2007			
20080363	PolyOne Corporation	Great Lakes Synergy Corporation	GLS Corporation; GLS International, Inc.
Transactions Granted Early Termination—12/28/2007			
20080350	Multiband Corporation	DirecTECH Holding Company Employee Stock Ownership Trust.	DirecTECH Holding Company, Inc.
20080360	Stichting Gerdau Johannpeter	Quanex Corporation	Quanex Corporation.
20080361	National Oilwell Varco, Inc	H. Lee Welch, Jr	Welch Power Source, LLC.; Welch Sales and Service, Inc.
Transactions Granted Early Termination—12/31/2007			
20080379	Essentia Health	Dakota Clinic, Ltd	Dakota Clinic, Ltd.
20080388	VeraSun Energy Corporation	US BioEnergy Corporation	US BioEnergy Corporation.
20080411	Trian Star Trust	Marsh & McLennan Companies, Inc	Marsh & McLennan Companies, Inc.
20080412	Trian Partners, LP	Marsh & McLennan Companies, Inc	Marsh & McLennan Companies, Inc.
20080440	Highland Crusader Fund II, Ltd	ICO Global Communications (Holdings) Limited.	ICO Global Communications (Holdings) Limited.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 08–77 Filed 01–10–08; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10115]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of currently approved

collection; *Title of Information Collection:* Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (sections 1011) Provider Enrollment Application; *Use:* Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, provides that the Secretary will establish a process (i.e., enrollment and claims payment) for eligible providers to request payment. The Secretary must directly pay hospitals, physicians and ambulance providers (including Indian Health Service, Indian tribe and tribal organizations) for their otherwise un-reimbursed costs of providing services required by section 1867 of the Social Security Act (EMTALA) and related hospital inpatient, outpatient and ambulance services. CMS will use the application information to administer this health services program and establish an audit process. The Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Sections 1011) Provider Enrollment Application has been revised. For a list of these revisions, refer to the summary of changes document. *Form Number:* CMS–10115 (OMB# 0938–0929); *Frequency:* On occasion; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 4,998.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on March 11, 2008.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 2, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–158 Filed 1–10–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–262 and CMS–10142]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2009 Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the formulary file, Plan Benefit Package (PBP) software, and supporting documentation as necessary. MA and PDP organizations will generate a formulary to illustrate their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, the PBP software will be used to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. CMS uses the formulary and PBP data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed formulary and PBP as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. Refer to the ''List of Changes for the CY2009–PBP and Formulary'' document for a summary list of changes. *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 475; *Total Annual Responses:* 4987.5; *Total Annual Hours:* 11,400.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY2009 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDPs); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization (MMA), Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries. CMS requires that MAOs and PDPs complete the BPT as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to CMS for review and approval. The purpose of the BPT is to collect the actuarial pricing information for each plan. The BPT calculates the plan's bid, enrollee premiums, and payment rates. Refer to ''Attachment C'' for a summary list of changes. *Form Number:* CMS–10142 (OMB#: 0938–0944); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 550; *Total Annual Responses:* 6,050; *Total Annual Hours:* 42,350.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 11, 2008.*

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: January 2, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–154 Filed 1–10–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Public Comment on the Proposed Adoption of ANA Program Policies and Procedures

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, HHS.

ACTION: Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures.

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974, as amended by 42 U.S.C. 2991b–1, the Administration for Native Americans (ANA) herein describes its proposed interpretive rules, general statements of policy and rules of agency procedure or practice in relation to the Social and Economic Development Strategies (hereinafter referred to as SEDS), Native Language Preservation and Maintenance (hereinafter referred to as Native Language), Environmental Regulatory Enhancement (hereinafter referred to as Environmental) programs, Environmental Mitigation (hereinafter referred to as Mitigation), and Native American Healthy Marriage Initiative (hereinafter referred to as NAHMI). Under the stature, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy, and rules of agency procedure or practice and to give notice of the final adoption of such changes at least 30 days before the changes become effective. This notice also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Sheila K. Cooper, Director of Programs Operations, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace 2-West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to (202) 690–7441. Comments will be available for inspection by members of the public at Administration for Native Americans, Aerospace Center, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Sheila K. Cooper at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, as amended, requires ANA to provide notice of its proposed interpretive rules, general statements of policy and rules of agency organization, procedure or practice. The proposed clarifications, modifications, and new text will appear in the five ANA FY 2008 Program Announcements (PA): SEDS, Native Language, Environmental, NAHMI and Mitigation. This notice serves to fulfill this requirement.

Introduction. This Notice of Public Comment (NOPC) addresses two groups of changes:

- Changes made across all program areas (Part I of NOPC). These are changes to text that is found in each PA program area. Therefore, the changes cited in Part I apply to all PAs.
- Changes made to specific program areas (Part II of NOPC). ANA has made significant changes to the Native Language, NAHMI, SEDS and Mitigation programs. These changes are outlined in Part II.

1. All program announcements will be revised to clarify program and application submission requirements for the public. These changes appear in the following sections: Definitions (Part A of NOPC), Funding Restrictions (Part B of NOPC), and Evaluation Criteria (Part C of NOPC). In addition, language and formatting changes have been made to various program area PAs in order to standardize the PAs across all program areas. These document formatting changes do not appear in this NOPC because the changes do not significantly affect or change the intent or meaning of the program information. Finally, funding restriction information will be applicable to all program areas and all PAs.

(A) *ANA Administrative Policies:* As required by Department of Health and Human Services (HHS) appropriations acts, all HHS recipients must credit HHS/ACF on materials developed using ANA funds. Therefore, the following bullet has been modified to meet this agency requirement to credit HHS/ACF.

The FY 2008 PA revised administrative policy will be:

All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to HHS/ACF on all materials developed using HHS/ACF funds.

(B) *ANA Definitions:* ANA has added six new definitions and clarified the definition of eight words. These new and revised definitions are provided for areas that applicants have historically found difficult to understand, have previously prompted numerous questions and have created application and project development inconsistencies. In addition, the revisions reflect changes in the evaluation criteria for FY 2008 PA. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. New Definitions: The FY 2008 PA includes definitions for the following terms: *impact, impact evaluation, project goal, project period, results and benefits*, and *statement of need.*

The FY 2008 PAs will include these new definitions:

Impact: The change in the physical, economic, social, financial, governmental, institutional, behavioral, language or cultural conditions in a community as a result of the ANA-funded project.

Impact Evaluation: Site visits conducted by ANA to provide grantees the opportunity to share, through qualitative and quantitative information, how the project goal and objectives were accomplished and how the identified community was impacted by the ANA-funded project.

Project Goal: The specific result or purpose expected from the project. The project goal specifies what will be accomplished over the entire project period. The project goal relates to the community goal and is achieved through the project objectives and activities. The project goal should directly relate to the statement of need.

Project Period: The total time for which the recipients' project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress and a determination by HHS that continued funding is in the best interest of the Government.

Results and Benefits: Measurement descriptions used to track the progress

of accomplishing an individual objective. The results and benefits must directly relate to the objective and the activities outlined in the Objective Work Plan (OWP) and include target numbers used to track the project's quarterly progress.

Statement of Need: A clear, concise and precise description of the nature, scope and severity of a problem. A statement of need typically identifies the specific physical, economic, social, financial, governmental, institutional, behavioral, language or cultural challenges of the community. The statement of need is the problem that the proposed project will address.

ii. Revised Definitions: The FY 2008 PA clarifies definitions for the following terms: *budget period, completed project, impact indicators, in-kind contributions, letter of commitment, leveraged resources, objective* and *OWP*.

The FY 2008 PA revised definitions will be:

Budget Period: The interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Completed Project: A project funded by ANA is finished, self-sustaining or funded by other than ANA funds and the results and outcomes of the funded project goal are achieved by the end of the project period.

Impact Indicators: Measurement descriptions used to verifY the impact or the achievement of the project goal. Indicators must be quantifiable and documented. Impact indicators include target numbers and tracking systems. ANA requires three impact indicators per project. Impact indicators are separate from the results and benefits section of the Objective Work Plan (OWP).

In-kind Contributions: In-kind contributions are the value of goods and/or services that benefit a Federally assisted project. In-kind contributions are provided without charge to a recipient (or sub-recipient or cost-type contractor under a grant). Any proposed in-kind match must meet the applicable requirements found in 45 Code of Federal Regulations (CFR) Part 74 and Part 92.

Letter of Commitment: A letter documenting the commitment to provide cash or in-kind contributions to meet the applicant match requirement. The letter of commitment may be from the applicant or a third-party. The letter of commitment must state the dollar amount (if applicable), the length of time the commitment will be honored and the conditions under which the organization will support the ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The in-kind contributions to be committed may be human, natural, physical or financial, and may include other Federal and non-Federal resources.

Leveraged Resources: The non-ANA resources acquired during the project period that support the project and exceed the 20 percent applicant match required for ANA grants. Such resources may include any natural, financial and physical resources available within the Tribe, organization or community to assist in the successful completion of the project. An example would be an organization that agrees to provide a supportive action, product, service, human or financial contribution that will add to the potential success of the project.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the OWP. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated project goals. These measurable outcomes are documented in the results and benefits section of the OWP. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART). Objectives are the foundation for the OWPs. A project cannot have more than three objectives per project period. Objectives may last more than ore budget period for multi-year projects.

Objective Work Plan (OWP): The ANA form that documents the project plan the applicant will use to achieve the objectives and produce the results and benefits expected for each objective. The OWP provides a project goal statement, objectives and detailed activities proposed for the project and how, when, where and by whom the activities will be carried out. ANA will require separate OWPs for each year of the project (the Office of Management and Budget (OMB) No. 0980–0204, expo 12/31/2009).

(C) *ANA Disqualification Factors:* In order to align to the new OMB format for Announcement of Federal Funding, ANA is relocating and clarifying the long standing Tribal Resolution Administrative policy statement. The Administrative Policy statement will be removed from Section I Funding Opportunity Description, ANA Administrative Policies to Section III.3 Disqualification Factors.

The FY 2008 PA new disqualification factor will be:

Applications, including Tribally authorized components and divisions, must include a Resolution (a formal decision voted on by the official governing body) approving the application. The Resolution must be current, signed, dated and cover the entire project period. Applications that do not include a complete Resolution will be considered non-responsive and the application will not be considered for competition.

(D) *ANA Funding Restrictions:* To reduce uncertainty, ANA has clarified its funding restriction policies. The first three bulleted statements identified below provide clarity on program project funding overlaps. This change ensures that ANA provides project funding to the greatest number of needy communities. The fourth bulleted statement clarifies the realignment of ANA goals across all program areas, provides clarity on funding restrictions applicable to projects submitted with critical gaps in the project plan and requires significant revisions to the OWP, project approach or the implementation strategy. The fifth bulleted statement restricts funding for projects that support Native languages that do not have living speakers. This restriction ensures that ANA's limited funds preserve and maintain currently spoken languages, especially those in danger of losing living speakers. It also promotes intergenerational communication so that speakers, generally elders, teach youth. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA text will be:

- Projects that allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on grant awards ANA will assess and consider whether the community or region is already receiving funding for a SEDS, Native Language or Environmental project from ANA.
- Applicants that submit a project that is essentially identical or similar in whole or in part, to previously funded projects.
- Projects that are essentially identical or similar in whole or in part to previously funded projects in the same community.
- Projects that do not further the three inter-related ANA goals of economic development, social development and

cultural preservation or are unlikely to be successful based on the proposed project approach and implementation strategy.

• Projects that seek to revive Native languages that do not have any living speakers.

(E) *ANA Application Evaluation Criteria:* In order to clarify for the applicant the necessity to provide appropriate information under each evaluation criteria, ANA has further defined application titles, reconfigured the assigned criteria weight and clarified the text within each criterion to avoid duplication of information requested.

i. Titles and Assigned Weight: In the FY 2008 PA ANA will adjust the weighted scores for all criteria in all program areas. The weighted score adjustments are made to indicate the value of the evaluation criteria and the criterion titles are changed to add clarity to the focus of the criterion section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

For the FY 2008 ANA Program Announcement, the criteria weighted scores will be:

Criterion One—Project Summary (3 pts.);

Criterion Two—Need for Assistance (18 pts.);

Criterion Three—Project Approach (40 pts.);

Criterion Four—Organizational Capacity (17 pts.);

Criterion Five—Project Impact/Evaluation (7 pts.);

Criterion Six—Budget and Budget Justification/Cost Effectiveness (15 pts.).

ii. ANA Evaluation Criteria.

a. *Criterion One—Project Summary:* The request for an introductory summary narrative text will be removed from the FY 08 PA because the same information is also requested for the ANA Project Abstract form. This change reduces redundancy in the application process. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2008 PA text for Criterion One will be:

Project Summary: This criterion will be evaluated to the extent the ANA Project Abstract form is present and properly completed. The Project Abstract provides crucial project information in a concise format and is used by the independent review panel, ANA staff and the Commissioner during all phases of the review process. The project summary section of the abstract focuses on the specific purpose of the proposal. The summary must include a brief statement of need, the project goal, project objectives and impact indicators. The Abstract must clearly indicate the Priority Area for which the applicant is submitting the application for funding consideration.

b. *Criterion Two—Need for Assistance:* Through project evaluations, ANA has determined that there are several factors in this criterion that are critical to project management, monitoring, and success. Therefore, in the FY 2008 PA this criterion is categorized into five subcriteria with weighted scores and includes expanded instructions to encourage applicants to more fully describe each of the critical factors. Furthermore, ANA is adding a request for a statement of need and a project goal. ANA anticipates that these inclusions will result in better defined project scopes and objectives. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2008 PA text for the Objectives and Need for Assistance criterion will be:

Need for Assistance: This criterion will be evaluated to the extent the applicant describes the community to be served by the project, identifies the community goal(s), defines the need, describes community involvement and relates the project goal to the community goal(s).

• *Identification of Community (2 points):* Provide appropriate background information on the community to be served, including geographic location of the project, where the project will be administered and a description of the community to be served by the project. A description of the community can include, but is not limited to, the following: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) a geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or Tribe.

Applicants from national and regional Native organizations must describe their organizational membership. Explain how the organization serves and impacts Native communities.

• *Community Goals (2 points):* Provide information on the community's long-range goals. Information can include, but is not limited to, materials such as excerpts from a community strategic plan or the mission statement of a non-profit organization.

• *Statement of Need (3 points):* A statement of need is a clear, concise and precise description of the nature, scope and severity of a problem. Create a statement of need that identifies the specific physical, economic, social, financial, governmental, institutional, language or cultural challenges of the applicant to be addressed by the proposed project.

• *Community Involvement (6 points):* Describe in detail how the community to be served was involved in the planning process and the origins of the project idea. Describe the community participation in writing the project proposal. Demonstrate and document community and/or Tribal government support for the project. Discuss the relationship of any non-ANA-funded activities supportive of the project. Documented support is a critical element of this evaluation criterion and includes, but is not limited to, materials such as letters of support, testimonials and community meeting minutes.

• *Project Goal (5 points):* Introduce the project goal and briefly state the project objective(s). The project goal is the specific result or purpose expected to be accomplished over the entire project period. The project goal should directly relate to the statement of need and an identified community goal.

c. *Criterion Three—Project Approach:* The FY 2008 PA criterion is organized into four subcriteria with respective weighted scores to identify critical factors in project implementation, management, monitoring, and leading to overall project success. The OWP instructions will be clearly separate from the project strategy. Descriptions for both contingency plans and sustainability plans will be expanded. ANA will limit the number of objectives to a maximum of three per project period. Finally, as a result of project monitoring and evaluation reviews, ANA is limiting the number of objectives for each project to three. This change will allow applicants to focus on the activities that are necessary to meet the project goal and objectives. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The Criterion Three text in the FY 2008 PA will be:

Project Approach: This criterion will be evaluated to the extent the applicant includes a narrative that addresses the project strategy, the challenges and contingency plan, the sustainability plan, and the ANA OWP form.

• *Project Strategy (10 points):* Present a narrative on the project strategy and implementation plan for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals.

(**NOTE:** for SEDS projects only) If relevant to the project, applicants must provide a Business Plan as an attachment.

Project Challenges and Contingency Planning (5 points): Based on ANA's project funding history and information gathered from project impact evaluations, ANA has determined that all projects encounter challenges and therefore need to have a contingency plan should a significant challenge arise. Challenges can arise because applicants make assumptions about critical events, conditions and/or decisions outside of the control of project management. The applicant needs to identify challenges that may arise during the project's initial start-up and throughout the project period. Consider such challenges as difficulty hiring and retaining key staff, difficulty recruiting community members and/or volunteers for project activities, difficulty recruiting target audience (e.g., students, children, elders), difficulty securing agreed upon support from partners to provide services/funding, planning shortfalls, possible disruption of the project timeline due to Tribal elections and difficulty securing permits or licensing from government entities. Identify potential challenges and explain the contingency plan that will be implemented to overcome those challenges. The contingency plan should ensure that the project will be successfully completed within the proposed funded timeframe.

• *Sustainability Plan (5 points).* Establish whether the project will be completed, self-sustaining, or funded by other than ANA funds at the end of the project period. If the project is to be completed, explain why the project does not need to continue. For projects that are expected to continue after ANA funding has expired, present the vision showing how this project will be sustained. For example, explain how a self-sustaining project will generate sufficient funds to continue.

• *Objective Work Plan (20 points).* The ANA OWP form is the blueprint for the project. The OWP provides detailed descriptions of the project goal, the project objectives, supporting activities and the results and benefits to be expected. It provides the what, how, when, where, and by whom of the project. As such, it is a stand alone document that should provide sufficient information for an application reviewer, ANA staff or a project manager to understand the project and how it will be implemented. The OWP is the basis for reporting on the project.

A project cannot exceed three objectives per project period. Complete an ANA OWP form for each objective per budget period. Some objectives will require more than one form, especially if submitting an electronic application. In addition, some objectives may last more than one budget period. Ensure the objective is correctly stated in the OWP, the project narrative and on the ANA Abstract form.

The objective statement should contain the following basic elements: What will be accomplished during the project period and when it will be accomplished. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART).

For each objective, list activities that provide a road map to achieve the objective. Each activity is a step in the logical progression of the project. Include specific and significant activities (e.g., hiring staff developing first draft), ongoing activities (e.g., meetings and classes), the submission of required ANA reports and attendance at ANA post-award training. Especially useful are activities that show progress and/or results on a quarterly basis. Explain how the activities outlined in the OWP will lead to the successful achievement of the project objectives and goal.

Identify the position responsible for the completion of each activity by identifying the title(s) of the salaried project staff person(s). Identify time periods that are realistic to complete each activity. Use elapsed times from the start of the project (e.g., month 1, month 2) rather than absolute dates. September 30 is the start date for each budget period. Identify the non-salary personnel hours, including non-salaried contributors (paid or in-kind) to the project. List hours according to who is providing them (e.g., Committee person—10 hours; ABC Consultant—5 hours). Provide supporting documentation for the hours listed in this column. If applying on *http://www.grants.gov,* be aware that each objective is limited to eight activities on the OWP form. Furthermore, each section has a limitation on the number of characters (i.e., 180) that are allowed.

The results and benefits section of the OWP is used to track the progress of accomplishing an individual objective. The results and benefits must directly relate to the activities that support the accomplishment of an objective in the OWP. The results and benefits are used to monitor the project's quarterly progress and must include target numbers. The criteria for evaluating the results and benefits expected are of the applicant's choosing and need to be documented and verifiable.

d. *Criterion Four—Organizational Capacity:* The FY 2008 PA criterion will be organized into two subcriteria with weighted scores and expanded instructions to identify factors related to organizational capacity (management structure, administrative structure and financial competence) and project staffing, which are critical to project success. Additional information on the staffing pattern will ensure applicants consider the time to hire, qualifications needed and requisite staff responsibilities. ANA has determined that difficulty achieving target dates for hiring often results in the need for budget modifications and project extensions or results in the inability to meet the project's objectives and goal. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 Criterion Four text will be:

Organizational Capacity: This criterion will be evaluated to the extent the applicant demonstrates their organizational capacity and ability to staff and implement the proposed project.

• *Organizational Capacity (12 points):* Provide information on the management structure of the applicant such as personnel and financial policies. Describe the administrative structure of the applicant and the systems to track the funding and progress of the project. Demonstrate the applicant's capacity and ability to administer and implement a project of the proposed scope. Include an organizational chart that indicates where the ANA project will fit in the existing administrative structure.

List all sources of Federal funding the applicant currently oversees. Include information on the funding agency, purpose of the funding and amount. Provide the most recent certified signed audit letter for the organization. If the applicant has audit exceptions, these issues should be discussed within this criterion, detailing any steps taken to overcome the exceptions.

Applicants are required to affirm that they will credit ANA and reference the ANA-funded project on any audio, video and/or printed materials developed in whole or in part with ANA funds.

A consortium applicant must identify the consortium membership and describe roles and responsibilities of each member in relation to the proposed project. One member of the consortium must be the recipient of the ANA funds. A consortium applicant must be an eligible entity as defined by this program announcement and the ANA regulations. Include documentation signed by the membership supporting the ANA application. ANA will not fund activities by a consortium of Tribes that duplicate activities for which member Tribes also receive funding from ANA. Include a copy of the consortia legal agreement or memoranda of agreement.

List all of the applicant's partners that will be providing support to the project's implementation. Include information on the current organizational relationship between the applicant and the partner. The experience and expertise of these partners must align with the activities stated in the OWP that they will be supporting. This information should state the nature, amount and conditions under which another agency, organization or individual will support a project funded by ANA.

• *Project Staffing Plan (5 points):* Provide staffing and position data that includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget.

NOTE: Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant. (In the last statement, ANA is clarifying the suggested hiring preference for Native Americans for ANA-funded projects (42 V.S.C. 2991b–2(c)(6)).

e. *Criterion Five—Project Impact/Evaluation:* The FY 2008 PA criterion text will focus on impact indicators and remove results and benefits expected. Furthermore, the number of required impact indicators is reduced from five to three and the list of possible impact indicators has been removed. ANA anticipates that these changes and the revised description of impact indicators will result in the selection and tracking of project-specific, applicant-selected impact indicators. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA Criterion text will be:

Project Impact/Evaluation: This criterion will be evaluated to the extent the applicant addresses the relationship between the project goal and the impact indicators.

ANA conducts on-site community impact evaluations during the last quarter of the project period Impact evaluations provide grantees the opportunity to share, through qualitative and quantitative information, how the project goal and objectives were accomplished and how the identified community was impacted by the ANA-funded project. This information is then submitted in an annual report to Congress.

Impact Indicators (7 points): Impact indicators are measurement descriptions used to verify the achievement of the project goal and are separate and distinct from the results and benefits section of the OWP. ANA uses impact indicators to determine if a grantee has achieved the expected project goal. Impact is defined as the change in physical, economic, social, financial, governmental, institutional, behavioral, language or cultural conditions as a result of the project.

Each applicant must submit three impact indicators. Two of the three project indicators are standard and required across all ANA programs and the third is directly related to the project goal. The required, standard ANA impact indicators are (1) the number of partnerships formed and (2) the amount of leveraged resources (see Definitions). The third required impact indicator is used to track the success of the project in achieving the project goal and is developed by the applicant. Discuss how this impact indicator relates to the project goal. For each impact indicator submitted provide a system to track the indicator and a target number. Explain the rationale used to choose the target number. Impact indicators are tracked throughout the grant and are reported quarterly.

f. *Criterion Six—Budget and Budget Justification/Cost Effectiveness:* The FY 2008 PA criterion is organized into two subcriteria with weighted scores and expanded instructions. The purpose of assigning weighted scores for both the budget and the budget justification is to provide clarity and to emphasize the importance and need to submit itemized line-item budgets separately from budget justifications. It is ANA's experience that separate documents are essential for review and monitoring of projects. Furthermore, the budget justification and cost effectiveness components have been consolidated to emphasize the relationship between the cost justification and cost reasonableness. (Legal authority: section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 V.S.C. 2991b and 2991 b–3.)

The FY 2008 PA Criterion text is:

Budget and Budget Justification/Cost Effectiveness: This criterion will be evaluated to the extent the applicant provides information on the Federal funds request, applicant match requirement, and reasonableness of costs. ANA requires applicants to submit an itemized budget for the costs associated with the successful accomplishment of the project objectives and goal. The budget must include estimated costs, a budget justification and information on cost effectiveness.

• *Budget (5 points):* Submit itemized budgets that list the Federal request and applicant match requirement. An itemized budget must be submitted for each budget period. These budgets should align with each Object Class Category listed under section B-Budget Categories of the Budget Information-Non Construction Programs on the SF–424A form. These sections are explained in section II of this program announcement.

The following is important to consider when preparing the budget: personnel costs should reflect the time needed to hire staff, if key personnel need to be hired and the hiring process is two months, then calculate the salary based on ten months, rather than twelve; include travel expenses for the chief financial officer and project director to attend a regional ANA post-award training; include local travel (e.g., mileage for local meetings) in the Other budget category, not in the Travel budget category.

• *Budget Justification/Cost Effectiveness (10 points):* Submit justification narratives that support and align with the Federal request and applicant match requirement. The justification should identify how the calculations for each of the line-items were developed and explain how they are important to the project. Include the

necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

Demonstrate cost effectiveness of the budget by explaining why this project and associated costs are an effective use of ANA resources. Indicate how the proposed budget aligns with regional costs and why funding is necessary to resolve the statement of need Identify source or include documentation of price quotations, where possible.

Identify the source of the required applicant match and provide documentation in the form of letters of commitment (see Definitions).

Submit a copy of the current Indirect Cost Rate Agreement (see Uniform Project Description definitions) in order to charge or otherwise seek credit for indirect costs. The agreement must have all costs broken down by category so ANA reviewers can be certain that no budgeted line-items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in the grant award.

• (**NOTE**: For SEDS projects only) For business development projects, demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income (see 45 CFR Part 74 and Part 92).

II. ANA FY 2008 Program Specific Changes. ANA FY 2008 PAs for the Native Language Program; NAHMI, SEDS, and Mitigation include changes specific to those programs. Changes are found throughout the PA and are identified below for each specific program.

(A) *ANA Native Language:* Changes to the Native Languages program area description, definitions, and priority area descriptions reflect the addition of Category IV: Native Language Immersion Projects to include the Esther Martinez Native American Languages Preservation Act of 2006 (Pub. L. 109–394). Each one of ANA's language categories builds on the other. Language Category IV is the logical next step in the process of cultural preservation through the implementation of language immersion programs. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

i. Executive Summary

The FY 2008 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2008 funds for new community-based activities under ANA's Native Language Preservation and Maintenance program area. Financial assistance is provided using a competitive process in accordance with the Native American Programs Act of 1974, and the Esther Martinez Native American Languages Preservation Act of 2006. ANA provides financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Grants are provided under the following four categories: Category I—Native Language Assessment grants are used to conduct the assessment needed to identify the current status of the Native American language(s) to be addressed; Category II—Native Language Project Planning grants are used to plan a language project; Category III—Native Language Project Implementation grants are used to implement a preservation language project that will contribute to the achievement of the community's long-range language goal(s); and Category IV—Native Language Immersion Project grants are only used for immersion projects with language nests and language survival schools in accordance with Public Law 109–394.

ii. Funding Opportunity Description:

The following statements will be added in the FY 2008 PA:

(To Legislative Authority) Esther Martinez Native American Languages Preservation Act of 2006, Public Law 109–394

(To Funding Opportunity Description, after the first paragraph) In 2006, Congress passed the Esther Martinez Native American Language Preservation Act of 2006, Public Law 109–394. The law amends the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs, and for other purposes.

(To Funding Opportunity Description, 1st sentence) For Category IV projects, applicants must abide by the parameters established by Public Law 109–394.

iii. The FY 2008 PA will be amended to include the following statement prior to the Category One description:

Please note that this announcement is divided into four priority areas. The first priority area is Category I—Native Language Assessment; the second priority area is Category II—Native Language Project Planning; the third priority area is Category III—Native Language Project Implementation; and the fourth priority area is Category IV—Native Language Immersion Project. Information on each priority area immediately follows section VIII of the preceding program area. The Standard Form (SF) 424 and ANA Project Abstract form must clearly indicate the correct priority area category (I, II, III or IV). An applicant cannot apply for more than one category.

iv. ANA added definitions in order to clarify Category IV.

The FY 2008 Native Language PA includes these definitions:

Language Nests as defined by Public Law 109–394: Site-based educational programs that provide Native language instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student, provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents) and ensure that a Native American language is the dominant medium of instruction in the Native American language nest.

Language Survival Schools as defined by Public Law 109–394: Site-based educational programs for school age students that provide an average of at least 500 hours of Native language instruction through the use of 1 or more Native American language for at least 15 students for whom a Native American language survival school is their principal place of instruction, develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages, provide for teacher training, work toward a goal of all students achieving fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science and are located in areas that have high numbers or percentages of Native American students.

v. The descriptions for Native Language Categories I, II and III will be revised and Category IV will be added.

a. Category I—Native Language Assessment

The FY 2008 PA Category I program area of interest will be:

A project that compiles, collects and organizes Native language data in order to have a current description of the community's language status obtained through a ''formal'' method (e.g., work performed by a linguist and/or a language survey conducted by community members) or an ''informal method'' (e.g., a community consensus of the language status based on elders, Tribal scholars, and/or other community members).

b. Category II—Native Language Project Planning

The FY 2008 PA Category II description will be:

The purpose of a Category II—Native Language Planning Project is to encourage Tribes and Native organizations to plan and design Native language projects. Applicants are encouraged to develop a project that results in a comprehensive plan to preserve the Native language that uses current community language assessment data, reviews innovative methods that bring older and younger Native Americans together to teach and learn the language, and considers all essential elements needed to sustain and implement a language project. Category II—Planning Projects are for planning and design only and do not include activities that call for direct language learning or instruction. Program areas of interest include:

- Projects to plan and design Master/Apprentice programs;
- Projects to plan and design a comprehensive Native language immersion programs for a language nest or survival school;
- Projects that plan, design, and test curriculum for students, parents and language instructors;
- Projects that plan and design teaching materials;
- Projects that plan and design multi-media language learning tools;
- Projects that plan and design a teacher certification program.

c. Category III—Native Language Project Implementation

The FY 2008 Category III description will be:

The purpose of Category III grants is to provide support to Tribes and Native organizations in the implementation of a Native language project to achieve the community's long-range language goal(s). Program areas of interest under Category III include:

- Projects to produce and disseminate culturally relevant printed stories for children, on mental and physical disabilities, using the Native language of the community;
- Projects to facilitate and encourage inter-generational teaching of Native American language skills;
- Projects to train teachers, interpreters or translators of Native languages;
- Projects to disseminate culturally relevant materials to be used to teach and enhance the use of Native American languages;
- Projects to implement an immersion, mentor or distance learning model;
- Projects to produce, distribute or participate in television, radio or other media forms to broadcast Native languages;
- Projects to compile, transcribe and perform analysis of oral testimony;
- Projects to implement an educational site-based immersion project.

d. Category IV—Native Language Immersion Projects

The FY 2008 Category IV description will be:

The purpose of Category IV grants is to fund Native American Language Immersion projects. The only program areas of interest funded under this priority area are immersion projects for language nests or for language survival schools.

The program area of interest for a Category IV language nest project as defined by statute are site-based educational programs that—

○ provide Native language instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student, provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents) and ensure that a Native American language is the dominant medium of instruction in the Native American language nest.

The program area of interest for a Category IV language survival school as defined by statute are site-based educational programs for school-age students that—

○ provide an average of at least 500 hours of Native language instruction through the use of 1 or more Native American language for at least 15 students for whom a Native American language survival school is their principal place of instruction, develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages, provide for teacher training, work toward a goal of all students achieving fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science and are located in areas that have high numbers or percentages of Native American students.

vi. Evaluation Criteria. In addition to the newly developed evaluation criteria presented in Part I. C. of this NOPC, additional information requests for the Native Language program have been added. The additional information reflects the priority area-specific information that is necessary for project review and administration. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Public Law 109–394.)

a. Category I—Native Language Assessment

The FY 2008 PA will include the following statement in Criterion Two—Need for Assistance, Identification of Community:

Describe the known status of the Native American language(s) in the community. Indicate how many known speakers of the language(s) are in the community.

b. Category II—Native Language Planning

The FY 2008 PA will include the following in Criterion Two—Need for Assistance, Identification of Community:

Describe the current status of the Native American language to be addressed in this planning project. Current status is defined as data compiled within the previous 36 months. The description of the current status minimally includes the following information: Age, gender and number of speakers; level(s) of fluency; number of first language speakers, number of second language speakers, and level of fluency; where Native language is used, e.g., home, court system, religious ceremonies, church, media, school, governance and cultural activities; rate of language loss or gain; and the source of data (formal and/or informal).

Fully describe existing community language programs and projects, if any, in support of the Native American language to be addressed by the ANA project. If the applicant has never had a language program, include a detailed explanation of what barriers or circumstances prevented the establishment of a community language program.

c. Category III—Native Language Implementation

The FY 2008 PA will include the following in Criterion Two—Need for

Assistance, Identification of Community:

Describe the current status of the Native American language to be addressed in this project. Current status is defined as data compiled within the previous 36 months. The description of the current status minimally includes the following information: Age, gender and number of speakers; level(s) of fluency; number of first language speakers, number of second language speakers, and level of fluency; where Native language is used, e.g., home, court system, religious ceremonies, church, media, school, governance and cultural activities; rate of language loss or gain; and the source of data (formal and/or informal).

Describe existing community language programs and projects, if any, in support of the Native American language to be addressed by the ANA project. If the applicant has never had a language program, include a detailed explanation of what barriers or circumstances prevented the establishment of a community language program.

The FY 2008 PA will include the following in Criterion—Three Approach, Project Strategy:

Include a brief description of how the project will determine effective language growth has occurred in the community.

Describe how the project's methodology, research data, outcomes, or other products can be shared and modified for use by other Tribes or Native communities. If this is not feasible or is culturally inappropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and continuing vitality of Native languages.

Describe how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations. Native language projects that produce audio or print media will now include a stipulation that a copy of the products will be provided to ANA for the Language Repository. Federally recognized Tribes are exempt from this stipulation and may choose not to submit project products.

d. Category IV—Language Immersion Projects

The FY 2008 PA will include the following in Criterion Two—Need for Assistance, Identification of Community:

Describe the current status of the Native American language to be addressed in this project. Current status is defined as data compiled within the previous 36 months.

The FY 2008 PA will include the following in Criterion Three—Approach, Project Strategy:

Fully describe the existing Native language program(s), and include the following: (1) The program goals; (2) the number of program participants; (3) the number of speakers; (4) the age range of participants (e.g., 0–5, 6–10, 11–18); (5) the number of language teachers; (6) the criteria used to acknowledge competency of language teachers; (7) the resources available to the applicant (e.g., valid grammars, dictionaries and orthographies) or describe other suitable resources; and (8) the program achievements.

The FY 2008 PA will include the following in Criterion Four—Organizational Capacity, Organizational Capacity:

For language nest projects, the applicant shall provide information on the capacity of the organization to provide instruction and child care for at least 10 children under the age of 7 for an average of at least 500 hours per year per student. The applicant shall also provide information on the capacity of the applicant to provide classes to the parents of the students in the language nest.

For a language survival school project, the applicant shall provide information on the capacity of the organization to provide an average of at least 500 hours of instruction through the use of 1 or more Native American languages for at least 15 students. Information must include a certification by the applicant that the applicant has not less than 3 years of experience in operating and administering a Native American language survival school, a Native American language nest or any other educational program in which instruction is conducted in a Native American language. Certification should include at least 3 years of accreditation by the State or Tribe to teach the Native American language to the relevant age group.

vii. Funding Thresholds. The new FY 2008 priority area will revise the funding thresholds for each language category, which reflects ANA availability for funds in this program area. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Public Law 109–394.)

viii. Project Periods: The new FY 2008 Native Language categories will have specific project periods. Category I will be a 12-month project period; Category II will be a 12- or 24-month project period; Category III will be a 12-, 24-, or 36-month project; and Category IV will be 36-month-only project period. These project periods allow ANA to fund the greatest number of projects while still allowing ample time for projects in each category to be completed. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Public Law 109–394.)

ix. Forms, Assurances, and Certifications. The additional certification requirement was added to comply with the Esther Martinez Native American Languages Preservation Act of 2006. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Public Law 109–394.)

The FY 2008 PA Category IV—Language Immersion will include an additional requirement:

For applicants applying as a Category IV Native American language survival school, submit the following certification:

- A certification that the applicant has operated and administered a Native American language survival school, a Native American language nest, or any other educational program in which instruction is conducted in a Native American language for at least 3 years. Certification may include accreditation from the applicant's State and/or Tribe.

(B) *ANA NAHMI:* The FY 2008 PA includes two priority areas, specifically Category I—NAHMI Project Planning and Category II—NAHMI Project Implementation. The division of the NAHMI program area into two priority areas will make developing project proposals more feasible for applicants and executing projects more manageable for grantees. It also will lead to reduced project periods, thus reducing the challenges of long-term budget requirements and grant administration. ANA anticipates that these changes will increase applications under this program area. Category II includes additional program areas of interest, specifically projects that target fathers and absentee parents. These areas of interest were included because they have a direct impact on child welfare. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. Executive Summary

a. In the first paragraph the FY 2008 PA will state: * * * funds for projects that plan for and implement approaches to improve * * * and strengthening families (including absentee parent activities) in Native American communities.

b. The FY 2008 PA text, beginning with the third paragraph which focuses on NAHMI, will be:

The Native American Healthy Marriage Initiative (NAHMI) is a component of the ACF HMI (Healthy Marriage Initiative) and specifically promotes planning and implementing culturally competent strategies for fostering healthy marriages, responsible fatherhood and child well-being to strengthen families within the Native American Community.

ANA believes a focused strategy is needed to support the Native American Community because of the unique experiences of the Native American population, and there is a clear link between healthy marriage and child wellbeing. The NAHMI-focused strategy includes three components: (1) Education and Communication; (2) the Creation and Enhancement of Collaborations and Partnerships; and (3) Identifying Resources.

The goal of NAHMI is to increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships, including skills that can help them eventually form and sustain a healthy marriage; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy marriages; increase the percentage of Native American children who are raised by two parents in a healthy marriage environment that is also free of domestic violence; increase the percentage of involvement by absentee parents in the lives of their children; increase public awareness in Native American communities about the value of healthy marriages and responsible fatherhood; and encourage and support research on Native American healthy marriages and healthy marriage education.

ii. Funding Opportunity Description

The FY 2008 PA will be:

This program area seeks to fund projects that engage in the planning and implementation of approaches to remove barriers to forming lasting families and healthy marriages in Native communities. The announcement is divided into two priority areas. The first priority area is Category I—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning. Projects funded under Category I of this announcement will include activities that design and engage in a community-based planning process that identifies barriers to forming healthy marriages (including Traditional Native American marriages); assesses the need and interest of the community to participate in a NAHMI project; assesses existing absentee parenting programs; identifies strategies to implement a NAHMI project and develops projects that are designed to reduce or eliminate the challenges and barriers identified by the community. The second priority area is Category II—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Implementation. Projects funded under Category II of this announcement will include activities that provide community resources such as marriage education/enrichment training; pre-marital education; relationship skills education on communication, conflict resolution, and commitment; and other support activities such as family outings, family strengthening groups, and weekend pre-marital/marital education retreats.

iii. The FY 2008 PA will be amended to include the following statement prior to the priority one description:

Please note that this announcement is divided into two priority areas. The first priority area is Category I–Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning and the second priority area is Category II–Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Implementation. The second priority information immediately follows section VIII of priority area one. Applicants may submit under either Priority Area I or Priority Area II but not both priority areas. The Standard Form (SF) 424 and ANA Project Abstract form must clearly indicate the correct priority area.

iv. Definitions. The definition for Domestic Violence Protocol (DVP) will be added and the definition for logic model will be removed. These changes correspond to changes in the evaluation criteria. A DVP is required to be developed in Category I and is required for Category II. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b and 2991 b–3.)

The FY 2008 PA will include one new definition:

Domestic Violence Protocol: A protocol that describes how you will respond to domestic violence issues. Key components of a domestic violence protocol include key project partners, program description, mission of the healthy marriage project, scope and purpose of protocol, underlying principles and shared values, list of domestic violence shelters, definition of domestic violence, screening and assessment procedures, responding to disclosure of abuse procedures, confidentiality, training, and evaluation of protocol. For more information, please visit the ANA Web site at *http://www.acf.hhs.gov/programs/ana/programs/NAHMI/NAHMI_domestic_violence.html.*

v. The FY 2008 PA will include two priority areas, Category I—Project Planning and Category II—Project Implementation. Communities have requested additional time to plan and develop community partners for comprehensive healthy marriage and fatherhood projects. Therefore, ANA has created two priority areas; planning and implementation, to allow communities the opportunity to apply for shorter project periods and to focus on planning activities that will ensure successful future NAHMI projects. The FY 2008 PA for Category II revises the number of required program areas of interest from three to at least one. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

a. The FY 2008 PA will include the following Priority Area 1 description:

Priority Area 1: Category I—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning

Description

The purpose of a Category I planning project is to engage in a community-based planning process that assesses the current status of available resources and barriers to marriage and child well-being within an established Native community. Applicants are encouraged to develop a project that results in a comprehensive NAHMI plan that includes a community assessment of the challenges and barriers that negatively impact marriages, parenting, child well-being, and families within Native American communities; identifies resources and partnerships; and develops a strategy to help sustain healthy marriages and responsible fatherhood within Native American communities. Category I—Project Planning is for planning and design only. Program areas of interest include:

- Projects that develop a plan to provide youth education in high schools, youth organizations, and community centers on the value of healthy marriages and responsible fatherhood. This can include education on relationship conflict resolution, communication, and commitment, as long as it is done in the context of promoting healthy marriage. Projects should use a pre-marital education or responsible fatherhood curriculum focused on youth.

• Projects that develop a plan to offer marriage education and marriage skills, that may include communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.

• Projects that develop a plan to offer pre-marital education and marriage skills training for couples, individuals, or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (e.g. communication, conflict resolution, commitment) necessary to choose marriage for themselves, if they so desire.

• Projects that develop a plan to offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy marriages and families.

• Projects that develop a plan to offer education on communication and conflict resolution for absentee parents to improve the custodial and noncustodial parental relationship and increase absentee parents' involvement in their children's lives.

• Projects that develop a plan to provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.

• Projects that develop a plan to use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.

• Projects that develop a plan to conduct research on the benefits of healthy marriages and healthy marriage education.

• Projects that develop a plan to provide public advertising campaigns in Native American communities on the value of healthy marriage, parental involvement, and responsible fatherhood as a way to improve marriages and strengthen family relationships.

b. The FY 2008 PA will include the following Priority Area 2 description:

Priority Area 2: Improving the Well-Being of Children/Native American Healthy Marriage Initiative—Project Implementation

Description

The purpose of a Category II—NAHMI Project Implementation is to support a community-based project focused on healthy marriage and families. Other activities such as relationship skills, responsible parenting, abstinence education, and foster parenting can be included in the project but must not be the primary objective and must be in the context of supporting healthy marriage and responsible fatherhood. The primary objective of these projects is pre-marital education or marriage education for youth, adults, and couples. Eligibility for funding is restricted to projects of the type listed in this program announcement. Applicants should choose one or more program areas of interest from the list below:

• Projects that provide youth education in high schools, youth organizations and community centers on the value of healthy marriages and responsible fatherhood. This can include education on healthy relationship skills including conflict resolution, communication, and commitment, as long as it is done in the context of promoting healthy marriage. Projects should use a pre-marital education or responsible fatherhood curriculum focused on youth.

• Projects that offer marriage education and marriage skills, that may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.

• Projects that offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (e.g. communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.

• Projects that offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy marriages and families.

• Projects that offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.

• Projects that provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.

• Projects that use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.

• Projects that conduct research on the benefits of healthy marriages and healthy marriage education.

• Projects that provide public advertising campaigns in Native American communities on the value of healthy marriage, parental involvement, and responsible fatherhood as a way to improve marriages and strengthen family relationships.

vi. Evaluation Criteria: In addition to the newly developed evaluation criteria 35 presented in Part 1. C. of this NOPC, the FY 2008 NAHMI will remove the request for a logic model and revise the requirement for the Domestic Violence Protocol. The request for the logic model was removed to standardize the program announcements across all program areas. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

a. The FY 2008 PA Priority Area One (Project Planning) will include an activity to plan and design the Domestic Violence Protocol under Criterion Three—Project Approach, Objective Work Plan. The text will read:

Include an activity to plan and design the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence is occurring.

b. The FY 2008 PA Priority Area Two (Project Implementation) will include the following requirement under Criterion Three—Project Approach, Project Strategy. The text will read:

Applicants are required to discuss the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide appropriate

referral or services for individuals or couples where violence is occurring. Applicants should be able to demonstrate knowledge of the information and services provided by domestic violence coalitions within the community.

vii. Funding Thresholds. The funding thresholds for this program will be revised to reflect ANA's availability of funds within this special initiative program area. These thresholds allow ANA to provide funding to the maximum number of applicants. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 band 2991b–3.)

viii. Project Periods. The project periods reflect the review and assessment of projects monitored under this special initiative program area. These project periods allow ANA to provide funding to the maximum number of applicants. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

In the FY 08 PA, project periods will be:

- Priority Area 1—Planning: 12 months.
- Priority Area 2—Implementation: 36 months.

(C) *ANA SEDS:* In the FY 2008 PA for both priority areas, the program areas of interest (PAI) for social development projects changed. The Administration for Children and Families has expanded the focus of healthy marriage to include responsible fatherhood activities. In order to eliminate redundancy, this activity was added to the NAHMI PA. The grandparents PAI was included to promote inter-generational programs. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA will replace the fatherhood PAI with the following:

- Projects that address the needs of grandparents raising grandchildren.

(D) *ANA Mitigation:* The FY 2008 PA removes all definitions related to in-kind contributions, including *in-kind contributions, leveraged resources, partnerships, and letters of commitment.* Furthermore, the required number of impact indicators is reduced to one. These changes are reflective of Public Law 103–335 which does not require matching funds. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Public Law 103–335.)

Dated: January 2, 2008.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 08–56 Filed 1–10–08 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007F–0478]

Kemira Oyi; Filing of Food Additive Petition (Animal Use); Partially Ammoniated Formic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemira Oyi has filed a petition proposing that the food additive regulations be amended to provide for the safe use of partially ammoniated formic acid as a pH control agent in swine feed.

DATES: Submit written or electronic comments on the petitioner's environmental assessment by March 11, 2008.

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, 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 2258) has been filed by Kristi O. Smedley, Center for Regulatory Services, Inc., 5200 Wolf Run Shoals Rd., Woodbridge, VA 22192–5755, United States agent for Kemira Oyi, Porkkalantatu 3, PO Box 330, 001000 Helsinki, Finland. 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 partially ammoniated formic acid as a pH control agent in swine feed when used at levels up to 1.2 percent of the feed.

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: December 31, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E8–316 Filed 1–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27 and 28, 2008, from 8 a.m. to 5 p.m.

Location: Crowne Plaza Silver Spring, The Ballrooms, 8777 Georgia Ave., Silver Spring, MD, 301–589–0800.

Contact Person: Sohail Mosaddegh, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *sohail.mosaddegh@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 27, 2008, the committee will discuss new drug application (NDA) 022–110, telavancin powder for reconstitution and intravenous administration, Theravance, Inc., proposed for the treatment of complicated skin and skin structure infection. On February 28, 2008, the committee will discuss NDA 022–132, ceftobiprole medocaril (500 milligrams), lyophilized powder for reconstitution and intravenous administration, Johnson and Johnson Pharmaceutical Research and Development, LLC, proposed for the treatment of complicated skin and skin structure infection.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 12, 2008. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 4, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 5, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sohail Mosaddegh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 7, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–343 Filed 1–10–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee J—Population and Patient-Oriented Training.

Date: February 13, 2008.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

Contact Person: Ilda M. McKenna, PhD, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–64 Filed 1–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel R25 SEP.

Date: January 23, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 1068, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Glowa, PhD, Scientific Review Officer, National Center For Research Resources, or National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078–MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–65 Filed 1–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Tissue Engineering.

Date: March 11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Head Marriott, One Hotel Circle, Hilton Head Island, SC 29928.

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Blvd., Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: January 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–66 Filed 1–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Pathogen-Induced Chronic Inflammation.

Date: January 31, 2008.

Time: 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. Prabhudas, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Pharmacological Approaches to Combating Antimicrobial Resistance.

Date: February 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Salon A, Gaithersburg, MD 20890.

Contact Person: Darren D Sledjeski, PhD., Scientific Review Officer, NIH/NIAID/DHHS, Scientific Review Program, 6700B Rockledge Drive, MSC–7616, Room 3131, Bethesda, MD 20892–7616, 301–451–2638, *sledjeskid@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–67 Filed 1–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R21.

Date: January 30, 2008.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD., Scientific Review Officer, NIDCR, 45 Center Drive, 4AN–24E, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–68 Filed 1–10–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0001]

Committee Name: Homeland Security Information Network Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSINAC) will meet from February 12–13, 2008, in Potomac, MD. The meeting will be open to the public.

DATE: The HSINAC will meet Tuesday, February 12, 2008, from 9 a.m. to 4:30 p.m. and on Wednesday, February 13, 2008, from 8:30 a.m. to 12 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854–4436. Send written material, comments, and requests to make oral presentations to Elliott Langer, Department of Homeland Security, 245 Murray Lane SW, Bldg 410; Washington, DC 20528. Requests to make oral statements at the meeting should reach the contact person listed below by February 1, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by February 1, 2008. Comments must be identified by DHS–2008–0001 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Elliott.langer@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–282–8191.
- *Mail:* Elliott Langer, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Homeland Security Information Network Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elliott Langer, 245 Murray Lane SW., Bldg 410, Washington, DC 20528, *Elliott.langer@dhs.gov,* 202–282–8978, fax 202–282–8191.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the HSINAC is to identify issues and provide independent advice and recommendations for the improvement of HSIN to senior leadership of the Department, in particular the Director of Operations Coordination. The agenda for this meeting will include an update on efforts concerning the improvement of HSIN and discussions to develop a methodology of collecting and validating HSIN community User input and User based system requirements.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in HSINAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to Bolger Center will have to pre-register to be admitted to the building. Please provide your name, telephone number by close of business on February 1, 2008, to Elliott Langer (202–282–8978) *(Elliott.langer@dhs.gov).*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elliott Langer as soon as possible.

Roger T. Rufe, Jr.,

Director of Operations Coordination.

[FR Doc. E8–292 Filed 1–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Bourne, MA; Green Bay, WI; Pittsburgh, PA; Texas City, TX; Salisbury, MD; and Toledo, OH

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Bourne, MA; Green Bay, WI; Pittsburgh, PA; Texas City, TX; Salisbury, MD; and Toledo, OH.

DATES: TWIC enrollment will begin in Bourne and Green Bay on January 23, 2008; Pittsburgh and Texas City on January 24, 2008; and Salisbury and Toledo on January 30, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) web page at *www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Bourne, MA; Green Bay, WI; Pittsburgh, PA; Texas City, TX; Salisbury, MD; and Toledo, OH. Enrollment will begin in Bourne and Green Bay on January 23; Pittsburgh and Texas City on January 24; and Salisbury and Toledo on January 30, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Southeastern New England, including those in the Port of Bourne; Captain of the Port Zone Lake Michigan, including those in the Port of Green Bay; Captain of the Port Zone Pittsburgh, including those in the Port of Pittsburgh; Captain of the Port Zone Houston-Galveston, including those in the Port of Texas City; Captain of the Port Zone Baltimore, including those in the Port of Salisbury; and Captain of the Port Zone Detroit, including those in the Port of Toledo must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on January 7, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–360 Filed 1–10–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5030–FA–06, FR–5100–FA–06]

Announcement of Funding Awards for the Self-Help Homeownership Opportunity Program Fiscal Years 2006 and 2007

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Availability (NOFA) for the Self-Help Homeownership Opportunity Program (SHOP). This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7164, Washington, DC 20410–7000; telephone (202) 402–4589 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Fiscal Years 2006 and 2007 Self-Help Homeownership Opportunity Program competitions were designed to facilitate and encourage innovative homeownership opportunities through self-help housing where the homebuyer would contribute a significant amount of sweat-equity toward the construction of the new dwelling. Applicants were required to be a national or regional nonprofit organization or consortium.

The competitions were announced in the SuperNOFAs published May 8, 2006 (71 FR 11962) for the Fiscal Year 2006 competition and March 13, 2007 (72 FR 11649) for the Fiscal Year 2007 competition. The NOFAs allowed for $19,800,000 for SHOP for the Fiscal Year 2006 competition and $18,677,043 for SHOP for the Fiscal Year 2007 competition. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

For the Fiscal Year 2006 competition, a total of $19,800,000 was awarded to three grantees nationwide. For the Fiscal Year 2007 competition, a total of $18,677,043 was awarded to four grantees nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: December 20, 2007.

William H. Eargle,

Deputy Assistant Secretary for Operations, Office of Community Planning and Development.

FISCAL YEAR 2006 FUNDING AWARDS FOR SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAMS

Recipient	State	Amount
Community Frameworks	WA	$5,271,000
Habitat for Humanity International	GA	8,639,000
Housing Assistance Council	DC	5,890,000
Total		19,800,000

FISCAL YEAR 2007 FUNDING AWARDS FOR SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAMS

Recipient	State	Amount
Community Frameworks	WA	$2,801,556
Habitat for Humanity International	GA	8,404,670
Housing Assistance Council	DC	5,229,572
PPEP Microbusiness and Housing Development Corporation	AZ	2,241,245
Total		18,677,043

[FR Doc. E8–362 Filed 1–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or

call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 3, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–124 Filed 1–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of National Geospatial Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Establishment of National Geospatial Advisory Committee.

SUMMARY: The Department of the Interior, after consultation with the General Services Administration, has established the National Geospatial Advisory Committee under the authority of the Federal Advisory Committee Act (FACA). The Committee will provide advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary of the Interior or designee), related to management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee will review and comment upon geospatial policy and management issues and will provide a forum to convey views representative of non-Federal partners in the geospatial community.

DATES: Comments regarding the establishment of this Committee may be submitted by January 28, 2008,

ADDRESSES: Send comments to John Mahoney, U.S. Geological Survey, U.S. Department of the Interior, 909 First Avenue, Suite 422, Seattle, Washington 98104, e-mail address *jmahoney@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (206–220–4621),

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the FACA (5 U.S.C. App.). The Secretary of the Interior certifies that he has determined that the formation of the Committee is necessary and is in the public interest.

The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior through the Chair of the FGDC Steering Committee and will function solely as an advisory body. The Committee will provide recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The Secretary of the Interior will appoint Committee members and their alternates to the Committee to serve 2-year terms. The Committee will be composed of approximately 25 representatives, who will be selected to generally achieve a balanced representation of the viewpoints of the various stakeholders involved in national geospatial activities and the development of the NSDI.

The Committee is expected to meet approximately 3–4 times per year. Committee members will serve without compensation. Travel and per diem costs will be provided for Committee members by the U.S. Geological Survey (USGS). The USGS will provide necessary support services to the Committee. Committee meetings will be open to the public. Notice of committee meetings will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

In accordance with the FACA, we will file a copy of the Committee's charter with the Committee Management Secretariat, General Services Administration; Committee on Energy and Natural Resources, United States Senate; Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

The Certification for establishment is published below.

Certification

I hereby certify that the National Geospatial Advisory Committee is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by OMB Circular A–16 (Revised), *''Coordination of Geographic Information and Related Spatial Data Activities.''* The Committee will assist the Department of the Interior by providing advice and recommendations related to the management of Federal geospatial programs and the development of the National Spatial Data Infrastructure.

Dated: December 20, 2007.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 08–70 Filed 1–10–08; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14857–B, F–14857–C2; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Gwitchyaazhee Corporation. The lands are in the vicinity of Fort Yukon, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 18 N., R. 9 E.,
Secs. 13 to 36, inclusive.
Containing 14,734.03 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Gwitchyaazhee Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 11, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222

West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Land Transfer Adjudication I.

[FR Doc. E8–328 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–07–5440]

Notice of Availability of Draft Environmental Impact Statement for the Westside Irrigation District Land Conveyance Project, Big Horn and Washakie Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of Draft Environmental Impact Statement (DEIS).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management (BLM) announces the availability of the Westside Irrigation District Land Conveyance Project DEIS for public review and comment. The DEIS analyzes the consequences of a legislated conveyance of all right, title and interest, excluding mineral interest, of a parcel of land administered by the BLM to the Westside Irrigation District, Worland, Wyoming.

DATES: The DEIS will be available for public review and comment for 45 calendar days starting on the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The BLM can best use public comments if they are submitted within the 45-day review period.

Any public meetings or other involvement activities for the Westside Irrigation District Land Conveyance (Westside Conveyance) project will be announced to the public by the BLM at least 15 days in advance through public notices, media news releases, Web site announcements, or mailings.

ADDRESSES: A copy of the DEIS has been sent to affected Federal, State, and local governments and to interested parties. The DEIS and its supporting documents will be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/wfodocs/westside.*

Copies of the DEIS are available for public inspection during normal business hours at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003; and
- Bureau of Land Management, Worland Field Office, 101 S. 23rd, Worland, Wyoming 82401.

Copies of the DEIS will also be delivered to the public libraries in the following communities:

- Worland, Wyoming;
- Basin, Wyoming;

A limited number of copies of the document will be available as long as supplies last. To request a copy, contact Don Ogaard, Project Manager, as described below. Written comments may be submitted by the following methods:

- *E-mail: wymail_westside@blm.gov*;
- *Mail:* Don Ogaard, Project Manager, Bureau of Land Management, Worland Field Office, P.O. Box 119, Worland, Wyoming 80401;
- Hand-delivered to the Worland Field Office at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Don Ogaard, Project Manager, Bureau of Land Management, Worland Field Office, P.O. Box 119, 101 S. 23rd, Worland, Wyoming 82401. Mr. Ogaard may also be reached by telephone at (307) 347–5160.

SUPPLEMENTARY INFORMATION: Public Law 106–485 (Nov. 9, 2000; 114 Stat. 2199) directs the Secretary of the Interior, acting through the BLM, to convey a parcel of public land in Big Horn County and Washakie County, to the Westside Irrigation District (Irrigation District), Worland, Wyoming. Public Law 106–485 also directs the BLM to complete an environmental analysis under NEPA.

The Westside Conveyance project area is located in southern Big Horn County and northern Washakie County. The southern end of the project area is approximately 5 miles northwest of Worland, Wyoming. The study area and tract of land comprises 16,500 acres, in Townships 92 W., 92½ W., and 93 W.; Ranges 48 N. and 49 N.

On February 22, 2005, the BLM published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement (EIS) under the NEPA.

The DEIS considers the environmental consequences of three alternatives:

- The No Action Alternative;
- Alternative 1—the legislated proposed action transferring 16,500 acres; and,
- Alternative 2—an alternative under which only those lands actually suitable for irrigation and those needed for project infrastructure, approximately 11,500 acres, would be transferred.

Alternative 2 is the BLM's Preferred Alternative.

After the sale and conveyance of the land to the Irrigation District, the Irrigation District would offer the conveyed land for sale to qualified individuals in parcels no less than 160 acres per individual. The parcels of land would be specified for use to serve agricultural purposes. The Irrigation District would select qualified individuals through a lottery. Successful individuals then would be required to be members of and their lands included in the Irrigation District.

The law directing the conveyance of the land specifies that acreage may be added to or subtracted from the original 16,500 acres to satisfy any mitigation as required in the Final EIS and its Record of Decision (ROD). Alternative 2 would subtract 5,000 acres in accordance with this provision. The law further provides that proceeds from the sale of the public lands to the Irrigation District will be deposited in a special account ''for the acquisition of land and interests in land in the Worland District of the Bureau of Land Management that will benefit public recreation, public access, fish and wildlife habitat, or cultural resources.''

The State of Wyoming Water Development Commission (WWDC) is joint lead agency as provided in 40 Code of Federal Regulations 1500–1580. In the future the WWDC would use the FEIS and ROD in support of any future funding decisions made by the WWDC should the Irrigation District apply for water supply development assistance. Cooperating agencies in the preparation of the DEIS include Big Horn and Washakie Counties.

All comments submitted must include the commenter's name and street address. Comments including the names and addresses of the respondent will be available for public inspection at the Worland Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or any other personal identifying information in your comment, be advised that your entire comment, including your personal

identifying information may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Robert A. Bennett,

State Director.

[FR Doc. E8–279 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–47658, CA–670–5101–ER–B204]

Notice of Availability of Draft Environmental Impact; Statement/ Environmental Impact Report (EIS/EIR) and Draft Land Use Plan Amendments/ for the Proposed Sunrise Powerlink Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), has prepared a Draft EIS/EIR (which includes draft land use plan amendments) for the proposed Sunrise Powerlink Project proposed by San Diego Gas & Electric Company (SDG&E), and by this notice is announcing the opening of the comment period. The BLM is the lead Federal agency for the preparation of this EIS in compliance with the requirements of NEPA. The CPUC is the lead agency for the State of California for the preparation of this EIR in compliance with the requirements of the California Environmental Quality Act (CEQA).

DATES: To assure that they will be considered, the BLM/CPUC must receive written comments on the Draft EIS/EIR within 90 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, Internet Web sites, and/ or mailings.

ADDRESSES: You may submit comments in a variety of ways: (1) By U.S. mail, (2) by electronic mail, (3) by fax, or (4) by attending a public meeting and submitting written comments at the meetings.

By Mail: Please use first-class postage and be sure to include your name and a return address. Please send written comments to: Billie Blanchard, CPUC/ Lynda Kastoll, BLM, c/o Aspen Environmental Group, 235 Montgomery Street, Suite 935, San Francisco, CA 94104–3002.

By Electronic Mail: E-mail communications are welcome; however, please remember to include your name and return address in the e-mail message. E-mail messages should be sent to *sunrise@aspeneg.com.*

By Fax: You may fax your comments to (866) 711–3106. Please remember to include your name and return address in the fax, to write legibly, and use black or blue ink.

FOR FURTHER INFORMATION CONTACT: Information concerning the Draft EIS/ Plan Amendment may be obtained from Lynda Kastoll, Project Manager for the BLM, at (760) 337–4421, or e-mail at *lkastoll@ca.blm.gov.* Information concerning the EIR process may be obtained from Billie Blanchard, Project Manager for the CPUC, at (415) 703–2068 or on the CPUC Internet Web site at *http://www.cpuc.ca.gov/environment/ info/aspen/sunrise/sunrise.htm.*

A copy of the Draft EIS/EIR for the Proposed Sunrise Powerlink Project is available for review at:

- BLM—El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243, (760) 337–4421;
- BLM—Palm Springs/South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258, (760) 251–4849;
- CPUC—Los Angeles Office, 320 West 4th Street, Suite 500, Los Angeles, CA 90013, (213) 576–7000;
- CPUC—Headquarters Office, 505 Van Ness Avenue, Room 2103, San Francisco, CA 94102, (425) 703–2074; or
- CPUC Internet Web site at *http:// www.cpuc.ca.gov/environment/info/ aspen/sunrise/sunrise.htm;*
- Several public libraries in Imperial, San Diego and Riverside Counties, California.
- Electronic (on CD–ROM or DVD) or paper copies may also be obtained by contacting the BLM or the CPUC at the aforementioned addresses and phone numbers.

SUPPLEMENTARY INFORMATION: SDG&E proposes to construct a new 91-mile, 500-kilovolt (kV) electric transmission line from Imperial Valley Substation (in Imperial County, near the City of El Centro) to a new Central East Substation (in central San Diego County, southwest of the intersection of County Highways S22 and S2) and a new 59-mile 230-kV line that includes both overhead and underground segments from the new Central East Substation to SDG&E's existing Peñasquitos Substation (in the City of San Diego). Portions of the proposed 500-kV line transmission line would traverse approximately 35 miles of Federal lands managed by the BLM within the California Desert Conservation Area in Imperial County, and approximately 1 mile in San Diego County. Depending on which alternative is selected (exclusive of the No Action Alternative), the project would require an amendment to one or both of the following land use plans: the BLM's *California Desert Conservation Area Plan* (as amended) and the *Eastern San Diego County Planning Unit Management Framework Plan* because the route alignments would deviate from BLM designated utility corridors in several areas under these alternatives. The remainder of the proposed project would cross lands owned by various entities including State of California, local governments, and private parties.

The proposed transmission lines would utilize structures ranging in height from 120 to 170 feet, spaced approximately 700 to 1,600 feet apart, and would occupy rights-of-way of approximately 60 to 300 feet in width (subject to local conditions and restrictions). Existing disturbed corridors would be utilized to the extent feasible, to minimize potential environmental impacts. Where possible, SDG&E anticipates locating new facilities within or along existing rights-of-way.

The Draft EIR/EIS evaluates and presents the environmental impacts that are expected to result from construction and operation of the proposed project, and presents recommended mitigation measures that would avoid or minimize many of the significant environmental impacts identified. In accordance with CEQA and NEPA, the Draft EIR/EIS identifies alternatives to the proposed project (including the No Action Alternative) that could avoid or minimize significant environmental impacts associated with the project as proposed by SDG&E, and evaluates the environmental impacts associated with these alternatives.

The Draft EIR/EIS reflects input by government officials, agencies, non-governmental organizations, and concerned members of the public during the two public scoping periods following the CPUC's publication of the Notice of Preparation of an EIR/EIS on September 15, 2006, and the BLM's publication of the Notice of Intent in the **Federal Register** on August 31, 2006.

During those periods, several public involvement activities were completed, such as: establishment of an Internet Web page and a telephone hotline, 15 public scoping meetings (seven in October 2006 and eight in February 2007), and several meetings with a number of affected local jurisdictions. Consultation with agencies and tribal governments also continued after the formal scoping ended. In addition, notices regarding alternatives to be evaluated in the EIR/EIS were mailed to interested parties in March and May of 2007.

Comments received may be published as part of the EIS/EIR process. 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.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA–930).

[FR Doc. E8–280 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–1640–PH; 08–08807; TAS: 14X1109]

Notice Public Meetings: Sierra Front Northwestern Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will meet as indicated below.

DATES AND TIMES: The RAC will meet twice in fiscal year 2008: April 29–30 at the BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada; and July 15–16 at Bruno's Country Club Café, 445 Main Street, Gerlach, Nevada, with a field trip to the Black Rock-High Rock National Conservation Area. All meetings are open to the public. Meeting times are 9 a.m. to 4 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 3 p.m. unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Mark Struble, (775) 885–6107, E-mail: *mark_struble@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada.

Topics for discussion will include, but are not limited to:

April 29–30, (Carson City)—SNPLMA Round 9 (review of R9 proposals and RAC-hosted public comment time for development of tri-RAC recommendations to the Executive Committee), Pine Nut Mountains Resource Management Plan Amendment, Sand Mountain implementation of Conservation Strategy, grazing for fuels management, wind and geothermal energy proposals, wild horse and burro issues.

July 15–16, (Gerlach)—Winnemucca Resource Management Plan update, Black Rock National Conservation Area and wilderness areas planning (field tour), drought issues related to springs/water sources for wild horses, livestock and wildlife (field tour), tour of Friends of Black Rock facility in Gerlach, overnight at Soldier Meadows.

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at either of the two planned meetings. Final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times, will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html*, and sent to the media at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Mark Struble no later than 10 days prior to each meeting.

Dated: January 7, 2008.

Don Hicks,

Carson City Field Office Manager.

[FR Doc. E8–346 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–210–1220–MA]

Notice of Emergency Closure of Certain Public Lands to Motorized Vehicles in Twin Falls and Owyhee Counties, ID and Elko County, NV, Under Murphy Complex Emergency Stabilization and Rehabilitation Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure-Emergency/Safety.

SUMMARY: The Bureau of Land Management (BLM) Jarbidge Field Office is implementing an emergency closure in order to protect cultural and natural resources and stabilization treatments as recommended in the Department of the Interior's Emergency Stabilization and Rehabilitation Plan for the Murphy Complex Fire. The closure allows motorized vehicle traffic (e.g. All-Terrain Vehicles, pickups, motorcycles, sport utility vehicles, etc.) on established roads within the fire perimeter, legal boundaries and transportation routes (please refer to supplementary information for description of closure area). The purpose of the closure is to restrict off-road vehicle use while providing continued public access to and through the area. Vehicles traveling cross-country in a burned area may damage reemerging plants, increase erosion and spread noxious weeds. Closure signs will be posted at main entry points to this area. Maps of the closure area may be obtained at the address listed below.

DATES: This closure is effective upon publication in the **Federal Register**, and will remain in effect for two years from January 11, 2008. It may be lifted sooner if BLM determines that revegetation and stabilization efforts have resulted in successful re-growth of desired vegetation, as described below.

FOR FURTHER INFORMATION CONTACT: Max Yingst, Outdoor Recreation Planner, Jarbidge Field Office, Bureau of Land Management, 2536 Kimberly Road, Twin Falls, Idaho, 83301–7975, or call (208) 736–2362.

ADDRESSES: Copies of the closure and a map of the closed area may be obtained at the BLM, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301, telephone (208) 736–2350.

SUPPLEMENTARY INFORMATION: In July 2007, the Murphy Complex Fire consumed 496,760 acres in the Idaho BLM Twin Falls District, Jarbidge Field Office. This closure order applies to

approximately 510,477 acres of BLM lands and is considered an emergency situation to enhance protection of the resources involved. The Normal Fire Emergency Rehabilitation Plan (NFRP) Environmental Assessment, BLM, Lower Snake River District states: ''Access within the [Emergency Stabilization and Rehabilitation] project area may be temporarily limited during the recovery period (e.g., access limited to existing roads and trails).'' This order affects public lands in Owyhee and Twin Falls Counties, Idaho and Elko County, Nevada thus described:

Township 10S, Range 10E, sections 01, 02, 10–16, 20–29, 35, 36
Township 10S, Range 11E, sections 07–36
Township 10S, Range 12E, sections 07–11, 14–23, 25–36
Township 11S, Range 10E, sections 01, 02, 11–14, 23–26, 35, 36
Township 11S, Range 11E, all sections of BLM lands
Township 11S, Range 12E, sections 01–12, 14–23, 27–34
Township 12S, Range 07E, sections 25, 26, 32–36
Township 12S, Range 08E, section 31
Township 12S, Range 10E, sections 01 and 12
Township 12S, Range 11E, all sections of BLM lands
Township 12S, Range 12E, all sections of BLM lands
Township 13S, Range 06E, sections 13, 24, 25, and 36
Township 13S, Range 07E, 01–05, 07–36
Township 13S, Range 08E, sections 06, 07, 17–20, 28–36
Township 13S, Range 09E, sections 31–35
Township 13S, Range 11E, all sections of BLM lands
Township 13S, Range 12E, all sections of BLM lands
Township 13S, Range 13E, sections 18–21, 26–36
Township 14S, Range 06E, sections 01, 12, 13, and 24
Township 14S, Range 07E, sections 01–36
Township 14S, Range 08E, all sections of BLM lands
Township 14S, Range 09E, all sections of BLM lands
Township 14S, Range 10E, all sections of BLM lands
Township 14S, Range 11E, all sections of BLM lands
Township 14S, Range 12E, all sections of BLM lands
Township 14S, Range 13E, sections 01–31
Township 15S, Range 07E, sections 01–30, 32–36
Township 15S, Range 08E, all sections of BLM lands
Township 15S, Range 09E, all sections of BLM lands
Township 15S, Range 10E, sections 01–36
Township 15S, Range 11E, sections 01–36
Township 15S, Range 12E, sections 01–12, 14–23, 26–35
Township 15S, Range 13E, section 06
Township 16S, Range 07E, sections 01–05, 08–16, 21–28, 32–36
Township 16S, Range 08E, all sections of BLM lands
Township 16S, Range 09E, sections 01–21, 24, 25, 28–32
Township 16S, Range 10E, sections 03–09, 17–20, 30
Township 16S, Range 11E, sections 01–03, 11–13
Township 16S, Range 12E, sections 02–11, 14–23
Township 16S, Range 13E, sections 11–16, 21–28
Township 16S, Range 14E, sections 05–08, 18, 19, 29, 30
Township 47N, Range 56E, sections 01–04, 08–17, 20–29, 33, 34
Township 47N, Range 57E, sections 01–13, 16–21
Township 47N, Range 58E, sections 04–09, 18

BLM lands per county (acres):

Elko County, NV—18,631
Owyhee County, ID—435,968
Twin Falls County, ID—55,878
A total of approximately 510,477 acres.

The closure does not apply to authorized vehicles, rescue vehicles, BLM operation and maintenance vehicles, resource management activities, or use by fire and law enforcement vehicles. In addition, access to private property by property owners may be authorized by the BLM Field Manager. Nothing in this closure is intended to affect legal hunting as consistent with Idaho Department of Fish and Game regulations; however there will be no exceptions granted for cross country travel.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360–7), if you violate this closure on public land within the boundaries established, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided by Title 18 U.S.C. 3571.

Conditions for Ending Closure: Soil stabilization and revegetation treatments will be considered successful, if and when the following occur:

1. Slopes and soils show signs of stabilization and have not experienced slope failure through at least one winter season.

2. Re-growth of vegetation has sufficiently obscured cultural sites exposed by the fire.

3. Seeding treatments on burned areas are successfully established.

Authority: 43 CFR 8364.1 and 43 CFR 8341.2

Rick Vander Voet,

Jarbidge Field Office Manager, Idaho Bureau of Land Management.

[FR Doc. E8–306 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Mesa Verde National Park

AGENCY: National Park Service, Interior.

ACTION: Announcement of Park Boundary Revision.

SUMMARY: This notice announces the revision to the boundary of Mesa Verde National Park to include the parcel of land known as Tract 01–135. The United States will acquire this tract from The Mesa Verde Foundation upon the revision of the boundary. The National Park Service has determined that this boundary revision will make a significant contribution to the purpose for which the Park was created. The effect date of this boundary revision is the date on which this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mesa Verde National Park, P.O. Box 8, Mesa Verde NP, CO 81130–0008 or by telephone at 928–567–5276.

Before including your address, phone number, e-mail address, or other presonal 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.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1) provides that after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. This action will add one parcel of land comprised of 37.66 acres of land to the Mesa Verde National Park. The National Park Service proposes to acquire his parcel by donation from The Mesa Verde Foundation. This parcel is adjacent to the Park entrance. The acquisition of this parcel is necessary to construct a curatorial storage facility and visitor orientation center for Mesa Verde National Park.

The above parcel is depicted as tract number 01–135 on land status map sheet 1 of 1, having drawing number 307–92000 and dated June 29, 2006. This map is on file at the National Park Service Land Resources Program Center, Intermountain Region, Santa Fe, New Mexico, and at the Office of the Superintendent at Mesa Verde National Park, Mesa Verde, Colorado.

Dated: August 22, 2007.

Michael D. Snyder,

Regional Director, Intermountain Region.

Editor's Note: This document was received by the Federal Register on January 7, 2008.

[FR Doc. 08–59 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–KL–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 22, 2007. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 28, 2008.

J. Paul Loether, Chief,

National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Curley School, 201 Esperanza School, Ajo, 07001464.

ARKANSAS

Conway County

Little Rock to Cantonment Gibson Road—Old Wire Road Segment, (Cherokee Trail of Tears MPS), Address Restricted, Blackwell, 07001465.

Pulaski County

Hanger Hill Historic District, 1500 Blk. of Welch St., Little Rock, 07001466.

CALIFORNIA

Contra Costa County

Martinez City Library, 740 Court St., Martinez, 07001467.

San Diego County

Felicita County Park Prehistoric Village Site, Address Restricted, Escondido, 07001470.

San Francisco County

Coit Memorial Tower, 1 Telegraph Hill Blvd., San Francisco, 07001468.

Colombo Building, 1–21 Colombus Avenue, San Francisco, 07001469.

COLORADO

Boulder County

Sandbeach Lake Trail, (Rocky Mountain National Park MPS), S. of Lookout Mt., Meeker Park, 07001471.

Thunder Lake Trail—Bluebird Lake Trail, (Rocky Mountain National Park MPS), Roughly along N. St. Vrain Cr., W. of Wild Basin Ranger Stn., Allens Park, 07001472.

Larimer County

Gem Lake Trail, (Rocky Mountain National Park MPS), N. of Devils Gulch Rd. to Gem Lake, Estes Park, 07001473.

ILLINOIS

Cook County

International Tailoring Company Building, 847 W. Jackson Blvd., Chicago, 07001474.

Kankakee County

Hunter—Hattenburg House, 825 S. Chicago Ave., Kankakee, 07001475.

Lake County

Blair, William McCormick, Estate, 982 Sheridan Rd., Lake Bluff, 07001476.

KANSAS

Cowley County

Wilmer House, 1310 E. 9th Ave., Winfield, 07001477.

Douglas County

Breezedale Historic District, (Lawrence, Kansas MPS) 2301–2401 Massachusetts St., Lawrence, 07001478.

Edwards County

Kinsley Civil War Monument, L Rd., Hillside Cemetery, Kinsley, 07001479.

Finney County

Buffalo Hotel, 111–117 Grant Ave., Garden City, 07001480.

Ford County

Burr House, 603 W. Spruce, Dodge City, 07001481.

Labette County

Parsons Katy Hospital, 400 Katy Ave., Parsons, 07001482.

Montgomery County

Hotel Dale, 206 W. 8th St., Coffeyville, 07001483.

Sedgwick County

Eagle's Lodge #132, 200–202 S. Emporia, Wichita, 07001484.

Wyandotte County

Lowell Elementary School, (Public Schools of Kansas MPS) 1040 Orville Ave., Kansas City, 07001485.

LOUISIANA

Evangeline Parish

Laran, Jean Marie, House, 619 E. Main St., Ville Platte, 07001486.

MASSACHUSETTS

Middlesex County

District 7 School, Chicopee Row, Groton, 07001487.

Worcester County

Drake, Frances H. and Jonathan, House, (Underground Railroad in Massachusetts MPS) 21 Franklin St., Leominster, 07001488.

MICHIGAN

Allegan County

HENNEPIN (self-unloading steamship), Address Restricted, South Haven, 07001489.

Presque Isle County

Presque Island Lodge, 8211 E. Grand Lake Rd., Presque Isle, 07001490.

Wayne County

Federal Reserve Bank of Chicago Detroit Branch Building, 160 W. Fort St., Detroit, 07001491.

MISSOURI

St. Louis County

Saratoga Lanes Building, 2725 Sutton Blvd., Maplewood, 07001492.

St. Louis Independent City

McBride, William Cullen, Catholic High School, 1909–1915 N Kingshighway Blvd., St. Louis (Independent City), 07001493.

MONTANA

Glacier County

Cut Bank Municipal Airport and Army Air Force Base, Valier Hwy., Cut Bank, 07001494.

NORTH CAROLINA

Beaufort County

Bath School, King & Carteret Sts., Bath, 07001495.

Davidson County

Hedrick's Grove Reformed Church, 3840 Allred Rd., Lexington, 07001496.

Hertford County

East End Historic District, Bounded by Maple St., Town boundary, Catherine Creek Rd. & Holloman Ave., Ahoskie, 07001497.

Johnston County

Shiloh Primitive Baptist Church, 9495 Brogden Rd., Brogden, 07001498.

Mecklenburg County

Home Federal Building, 139 S. Tryon St., Charlotte, 07001499.

Southern Asbestos Company Mills, 1000 Seaboard St., Charlotte, 07001500.

Orange County

Rocky Ridge Farm Historic District (Boundary Increase). Includes portion of Country Club Rd., Laurel Hill Rd. & Ledge Ln., and all of Round Hill Rd., Chapel Hill, 07001501.

Wake County

Apex Historic District (Boundary Increase II), (Wake County MPS) Roughly centered on Hunter, Center, Chatham, Cunningham, Holleman & Hughes Sts., Apex, 07001502.

Harmony Plantation, (Wake County MPS) 5104 Riley Hill Rd., Wendell, 07001504.

Holleman, Samuel Bartley, House, (Wake County MPS) 3424 Avent Ferry Rd., New Hill, 07001503.

OREGON

Clackamas County

Shipley—Cook Farmstead, 18451 SW. Stafford Rd., Lake Oswego, 07001505.

Douglas County

Baimbridge—Kanipe Farmstead Historic District, 16513 Elkhead Rd., Oakland, 07001506.

Lane County

Christian, Daniel and Catherine, House, (Residential Architecture of Eugene, Oregon MPS) 170 E. 12th Ave., Eugene, 07001507.

Creswell Public Library and Civic Improvement Club Clubhouse, 195 S. 2nd St., Creswell, 07001508.

VIRGINIA

Franklin County

Dudley, Gwin, Home Site, Twin Chimneys Dr., Wirtz, 07001509.

[FR Doc. 08–31 Filed 1–10–08; 8:45 am]

BILLING CODE 4312–51–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for its Technical Evaluation customer surveys has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost. The OMB control number for this collection of information is 1029–0114 and is on the forms along with the expiration date.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 11, 2008, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please refer to OMB control number 1029–0114 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contract John A. Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in a series of technical evaluation customer surveys. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0114.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on September 14, 2007 (72 FR 52580). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–0114.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 750.

Total Annual Burden Hours: 63.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Dated: December 18, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 08–71 Filed 1–10–08; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on December 28, 2007, a proposed Consent Decree in *United States and State of Indiana* v. *City of Fort Wayne, Indiana*, Civ. No. 2:07–cv–00445, was lodged with the United States District Court for the Northern District of Indiana.

In this action, the United States seeks civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, in connection with the City of Fort Wayne's operation of its municipal wastewater and sewer system. The City currently discharges approximately one billion gallons of untreated sewage per year from various locations into the St. Joseph, St. Mary's, and Maumee Rivers, both directly and

through their tributaries. The Complaint alleges that the City's discharges, which occur approximately 60 times per year, violate the Clean Water Act, either because the discharges violate limitations and conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit, or because the discharges are from point sources not authorized by the City's NPDES permit. The Complaint also asserts claims by the State of Indiana for comparable violations of state law.

Under the proposed Consent Decree, the City would be required to: (1) Implement injunctive measures to address combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), at a total cost of approximately $250 million; (2) pay the United States a civil penalty of $269,190; (3) perform a federal Supplemental Environmental Project (SEP) valued at $400,000; and (4) either pay the State of Indiana a civil penalty of $269,190, or pay the State a civil penalty of $26,190 and complete state SEPs costing at least $484,542. Under the proposed Consent Decree, the injunctive relief is to be implemented over an 18-year period and is designed to eliminate SSOs and reduce the number of CSOs to approximately one per year on the St. Joseph River and four per year on the St. Mary's and Maumee Rivers.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Indiana* v. *City of Fort Wayne, Indiana*, D.J. Ref. 90–5–1–1–07653. Comments should either be e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Washington, DC 20044–7611.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320–1843 (contact Assistant United States Attorney Wayne Ault (219/937–5500)), and at the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel Nicole Cantello (312/886–2870)). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by e-mailing or faxing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax number (202) 514–0097, phone confirmation number (202) 514–1547). In requesting a copy from the Consent Decree Library, please enclose a check payable to the United States Treasury in the amount of $15.50 (25 cents per page reproduction cost) for a copy of the Consent Decree without appendices, or a check in the amount of $385.50 for the Consent Decree and all appendices. If the request is made by fax or e-mail, please forward a check in the appropriate amount to the Consent Decree Library at the address stated above.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 08–53 Filed 1–10–08; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622, notice is hereby given that on December 19, 2007 a proposed settlement agreement in *In re W.R. Grace & Co.,* Case No. 01–01139 (JFK), was lodged with the United States Bankruptcy Court for the District of Delaware. The proposed Settlement Agreement would resolve the United States' proofs of claim filed in W.R. Grace & Co.'s bankruptcy proceeding for environmental response costs at 33 sites pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

Under the terms of the Settlement Agreement, W.R. Grace & Co. will grant the United States an allowed general unsecured claim of $34,065,813.31 and an administrative priority claim of $2,294,279.86 (of which $672,574.42 will be paid within 30 days of Bankruptcy Court approval). Certain other PRPs at these sites will receive allowed general unsecured claims totaling $7,707,336.88.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Washington DC 20530, and may be submitted by electronic mail to *pubcommentees.enrd@usdoj.gov*. Comments should refer to *In re W.R. Grace & Co.* Case, No. 01–01139 (JFK), and Department of Justice Reference No. 90–11–2–07106/5.

The settlement agreement may be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of the agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov)*, fax no. 202–514–0097, phone confirmation number (202) 514–1547 In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 ($.25 per page) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 08–54 Filed 1–10–08; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 1–08]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, January 24, 2008, at 1:30 p.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room

6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 08–100 Filed 1–9–08; 3:48 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,232]

Philips Lighting Company Lamps Division, Danville, KY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated December 20, 2007, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service workers International Union (the Union) requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the subject firm. The determination was issued on November 9, 2007. The Department's Notice of determination was published in the **Federal Register** on November 21, 2007 (72 FR 65607). The subject workers are engaged in the production of incandescent glass bulbs and glass ornaments. Workers are separately identifiable by product line.

The determination was based on the Department's findings that the subject firm did not shift production of incandescent glass bulbs or glass ornaments to a foreign country; the subject firm exports glass bulbs abroad for further processing; the subject firm does not import articles that are like or directly competitive with the glass bulbs produced by the subject firm; and the subject firm's major customers of glass ornaments did not purchase imports of glass ornaments during the relevant period.

In the request for reconsideration, the Union alleged that the subject firm is importing incandescent lamps with glass bulbs that are like or competitive with those produced at the Danville, Kentucky facility and that a major customer of the subject firm has replaced purchases of glass ornaments from the subject firm with imports. The Union's request for reconsideration included support documentation.

The Department has carefully reviewed the workers' request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of January 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–288 Filed 1–10–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee, #1172.

Date and Time: February 8, 2008, 8:30 a.m.–1:30 p.m., Room 1295.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–8040.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 8, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–302 Filed 1–10–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Task Force on Cost Sharing; Committee on Strategy and Budget; Sunshine Act; Notice

The National Science Board's Task Force on Cost Sharing of the Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C.1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference, as follows:

DATE AND TIME: Wednesday, January 16, 2008 at 2 p.m.

SUBJECT MATTER: 1. Update on Cost Sharing Roundtable Discussion at the NSF I/UCRC 2008 Annual Meeting.

2. Discussion of Draft February 9, 2008 Board Report to Congress.

STATUS: Open.

PLACE: This teleconference will originate from the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Room 130 will be available to the public to listen to this teleconference.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for more information or schedule updates, or contact: Jennifer Richards, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Russell Moy,

Attorney-Advisor.

[FR Doc. E8–326 Filed 1–10–08; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2007 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received one petition in September 2007 to review certain practices in a beneficiary developing country to determine whether such country is in compliance with the ATPA eligibility criteria. This notice specifies the results of the review of that petition as well as the status of the petitions filed in prior years that have remained under review.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and the Andean Trade Preferences Extension Act (Pub.

L. 109–432), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2007 Annual ATPA Review is the fourth such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 15, 2007, USTR initiated the 2007 ATPA Annual Review and announced a deadline of September 17, 2007 for the filing of petitions (72 FR 45833). One petition was filed for the 2007 review, by Bumble Bee Foods, LLC, concerning Ecuador. The Trade Policy Staff Committee (TPSC) has conducted a preliminary review of this petition, has determined that it does not require further action and is terminating its review. USTR also received updated information from the U.S./Labor Education in the Americas Project (US/LEAP) concerning worker rights in Ecuador, which has been under consideration since the 2003 ATPA review.

The TPSC is terminating its review of a petition filed with respect to 19 U.S.C. 3202(c)(2)(A), by Engelhard Corporation in 2003 regarding its tax dispute with the Peruvian government because the petitioning company is no longer majority U.S.-owned. The TPSC is also terminating its review of a petition filed by Parsons Corporation in 2004 regarding a payment dispute with the Peruvian government, since that matter has since been resolved through arbitration.

Following is the list of all petitions from prior years that will remain under review through February 29, 2008, which is the period that the ATPA is in effect:

Ecuador Human Rights Watch
Ecuador U.S./Labor Education in the Americas Project
Ecuador AFL/CIO
Ecuador Chevron Texaco
Peru Princeton Dover
Peru Duke Energy

Carmen Suro-Bredie,
Chairman, Trade Policy Staff Committee.
[FR Doc. E8–307 Filed 1–10–08; 8:45 am]
BILLING CODE 3190–W8–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Statement Regarding Contributions and Support: OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of an employee's death can be a condition affecting entitlement to a survivor annuity and can affect the amount of both spouse and survivor annuities. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One form is completed by each respondent.

The RRB proposes no changes to Form G–134.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Estimated completion time (Min)	Burden (Hrs)
G–134:			
With Assistance	75	147	184
Without assistance	25	180	75
Total	100	.....	259

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.
[FR Doc. E8–311 Filed 1–10–08; 8:45 am]
BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 14, 2008:

A Closed Meeting will be held on Tuesday, January 15, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (4), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, January 15, 2008 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matters regarding financial institutions;

An opinion;

Resolution of a litigation claim;

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 8, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–405 Filed 1–10–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57104; File No. SR–ISE–2007–113]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Allow the Exchange To List Up to Seven Expiration Months for Broad-Based Security Index Options Upon Which an Exchange Calculates a Constant Three-Month Volatility Index

January 4, 2008.

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 November 30, 2007, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. On January 4, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Rule 2009(a)(3) (Terms of Index Option Contracts) to allow the Exchange to list up to seven expiration months for broad-based security index options upon which an exchange calculates a constant three-month volatility index. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend Rule 2009(a)(3) (Terms of Index Options Contracts) to allow the Exchange to list up to seven expiration months for broad-based security index options upon which a constant three-month volatility index is calculated. Currently, Rule 2009(a)(3) permits the Exchange to list only six expiration months in any index options at any one time.

Volatility products offer investors a unique set of tools for speculating and hedging. For example, the Chicago Board Options Exchange (''CBOE'') Volatility Index (''VIX'') options, first introduced in February 2006, have proven to be one of CBOE's most successful new products ever listed, currently averaging over 90,000 contracts traded per day. CBOE has stated that it plans to introduce new volatility products and new volatility indexes in the near future. One such index is the CBOE S&P 500 Three-Month Volatility Index (''VXV'').[5] Similar to the VIX, the VXV is a measure of S&P 500 implied volatility—the volatility implied by S&P option prices—but instead of reflecting a constant 1-month implied volatility period, VXV is designed to reflect the implied volatility of an option with a constant 3 months to expiration. Since there is only one day on which an option has exactly 3 months to expiration, VXV is calculated as a weighted average of options expiring immediately before and immediately after the three-month standard.

Accordingly, an index calculator would need to use four consecutive expiration months in order to calculate a constant three-month volatility index. Under the current application of ISE Rule 2009(a)(3), the Exchange generally lists three consecutive near term months and three months on a quarterly expiration cycle. One of the three consecutive near term months is always a quarterly month; however, that near term contract month (which is also a quarterly month) is not included as part of the three months listed on a quarterly expiration cycle. Therefore, in order to permit the addition of four consecutive near term months under current Rule 2009(a)(3), the Exchange would only be able to list two months on a quarterly expiration cycle. Because of customer demand and other investment strategy reasons for having three months on a quarterly expiration cycle, the Exchange is seeking to increase, from six to seven, the number of expiration months for broad-based security index options upon which a constant three-month volatility index is calculated.

Without this proposed rule change, if a three-month volatility index is calculated using only three consecutive near term months, this would result in the VXV being calculated with options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE calculates volatility indexes on other broad-based security indexes, such as the Dow Jones Industrial Average index (''DJX''), the Nasdaq-100 index (''NDX''), and the Russell 2000 index (''RUT''). CBOE may calculate a constant three-month volatility index on DJX, NDX, or RUT in the future. *See* Securities Exchange Act Release No. 56821 (November 20, 2007), 72 FR 66210 (November 27, 2007).

expiring three months apart about one-third of the time. Another one-third of the time, VXV would be calculated with options expiring two months apart. And the final one-third of the time, VXV would be calculated with options expiring one month apart. As a result, the calculation of the three-month VXV under the current rules would render the VXV subject to inconsistencies that may make the index unattractive as an underlying for volatility products. The proposed rule change will permit the Exchange, eight times a year, to add an additional seventh month in order to maintain four consecutive near term contract months.[6]

Therefore, the Exchange believes that the addition of a fourth consecutive near-term month for broad-based security index options upon which a constant three-month volatility index is calculated will result in a consistent calculation in which the option series that bracket three months to expiration will always expire one month apart. In order to accommodate the listing of a fourth consecutive near term month and to maintain the listing of three months on a quarterly expiration cycle, the Exchange proposes the increase, from six to seven, the number of expiration months for broad-based security indexes on which a constant three-month volatility index is calculated.

Capacity

ISE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month in order to maintain four consecutive near term contract months for those broad-based security index options upon which a constant three-month volatility index is calculated.

2. Statutory Basis

Because the increase in the number of expiration months is limited to broad-based security indexes upon which a constant three-month volatility index is calculated and because the series could be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) of the Act[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, to permit the Exchange to list options on the Fund immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal is substantially similar to a proposal recently submitted by CBOE and approved by the Commission,[13] and it raises no new regulatory issues.

The Commission believes that increasing, from six to seven, the number of expiration months for broad-based security indexes on which an Exchange calculates a constant three-month volatility index (to accomodate a fourth consecutive near-term month while maintaining the listing of three months on a quarterly expiration cycle) will result in a more consistent and predictable calculation in which the option series that bracket three months to expiration will always expire one month apart, thereby promoting just and equitable principles of trade while protecting investors and the public interest.

The Commission also notes ISE's representations that it possesses the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month in order to maintain four consecutive near term contract months for those broad-based security index options upon which the Exchange calculates a constant three-month volatility index.

For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

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

[6] Examples illustrating the need for a seventh month in order to maintain four consecutive near term contract months can be found in Securities Exchange Act Release No. 56821 (SR–CBOE–2007–82), *supra* note 5.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this five-day pre-filing notice requirement.

[12] *Id.*

[13] *See supra* note 5.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 4, 2008, the date ISE filed Amendment No. 1.

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–113 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE 2007–113 and should be submitted on or before February 1, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–303 Filed 1–10–08; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57100; File No. SR–NYSE–2007–87]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Incorporate Certain Definitions of Exchange Act Rules 13d–1 and 13d–3 Into NYSE Rule 460

January 4, 2008.

On September 28, 2007, the New York Stock Exchange LLC (''NYSE'' 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 NYSE Rule 460 to incorporate definitions from Rules 13d–1(i) and (j) and 13d–3 under the Act[3] for the purpose of determining whether a specialist is a beneficial owner of an equity security in which the specialist is registered and to make non-substantive, clarifying amendments to the rule. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 19, 2007.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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] and, in particular, the requirement of Section 6(b)(5) of the Act,[6] that the rules of an exchange are designed to, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission notes that NYSE Rule 460 does not currently provide definitions for the terms ''equity security,'' ''outstanding shares,'' and ''beneficial owner.'' As amended, NYSE Rule 460 would apply to these terms the meanings set forth, respectively, in Rules 13d–1(i), 13d–1(j), and 13d–3, under the Act,[7] thereby conforming the usage of these terms in NYSE Rule 460 to their usage in specified Commission rules. The proposed rule change also makes clarifying, non-substantive changes. The Commission finds that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NYSE–2007–87), as modified by Amendment No. 1 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–304 Filed 1–10–08; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.13d–1(i); 17 CFR 240.13d–1(j); and 17 CFR 240.13d–3.

[4] *See* Securities Exchange Act Release No. 56777 (November 9, 2007), 72 FR 65117.

[5] In approving this proposed rule change, the Commission notes that it 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 240.13d–1(i); 17 CFR 240.13d–1(j); and 17 CFR 240.13d–3.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11079 and #11080]

California Disaster Number CA–00074

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–1731–DR), dated 10/24/2007.

Incident: Wildfires; Flooding, Mud Flows, and Debris Flows directly related to the Wildfires.

Incident Period: 10/21/2007 and continuing.

EFFECTIVE DATE: 01/04/2008.

Physical Loan Application Deadline Date: 01/09/2008.

EIDL Loan Application Deadline Date: 07/24/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for the State of California, dated 10/24/2007 is hereby amended to expand the incident type for this disaster to include flooding, mud flows, and debris flows directly related to the wildfires.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–342 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463, notice is hereby given that the U.S. Small Business Administration (SBA), National Small Business Development Centers Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by board members, staff of the U.S. Small Business Administration, and interested others. The conference call will be held on Tuesday, January 15, 2008 at 1 p.m., Eastern Standard Time.

The purpose of this meeting is to introduce a new board member and to discuss official SBDC business.

Anyone wishing to make an oral presentation to the Board must contact Alanna Falcone, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 619–1612 or fax (202) 481–0134.

Meredith Davis,

Committee Management Officer.

[FR Doc. E8–337 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11139]

Oklahoma Disaster Number OK–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1735–DR), dated 12/18/2007.

Incident: Severe Winter Storms.

Incident Period: 12/08/2007 and continuing.

EFFECTIVE DATE: 12/21/2007.

Physical Loan Application Deadline Date: 02/18/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 12/18/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Beaver, Caddo, Canadian, Craig, Creek, Delaware, Grady, Mcclain, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Payne, Rogers, Seminole, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008).

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–340 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11139]

Oklahoma Disaster Number OK–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1735–DR), dated 12/18/2007.

Incident: Severe Winter Storms.

Incident Period: 12/08/2007 through 01/03/2008.

EFFECTIVE DATE: 01/03/2008.

Physical Loan Application Deadline Date: 02/18/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 12/18/2007, is hereby amended to establish the incident period for this disaster as beginning 12/08/2007 and continuing through 01/03/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–341 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11138]

Washington Disaster Number WA–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–1734–DR), dated 12/08/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing..

EFFECTIVE DATE: 12/19/2007.

Physical Loan Application Deadline Date: 02/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Washington, 12/08/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Clallam, Jefferson, King, Skagit, Snohomish, Wahkiakum.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008).

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–339 Filed 1–10–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2006–0096]

Social Security Ruling (SSR) 94–4p.; Rescission of SSR 94–4p, Policy Interpretation Ruling; Title II of the Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977: Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can Be Denied

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of SSR.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of the rescission of SSR 94–4p.

EFFECTIVE DATE: January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Robin Strauss, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7944 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability and supplemental security income programs. SSRs may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

On July 11, 1994, we issued SSR 94–4p which implemented the decisions in *Buffington, et al.* v. *Schweiker* and *Califano* v. *Yamasaki,* and provided that prior to the denial of waiver of recovery of an overpayment, SSA will conduct a face-to-face pre-recoupment hearing. SSR 94–4p stated our policy of:

- Giving adequate written notice of a determination of overpayment and the right to contest such determination and request waiver of recovery of the overpayment; and
- Providing the person from whom we are seeking recovery of an overpayment with the opportunity for a face-to-face oral hearing before we deny a request for waiver of recovery of the overpayment.

In 1996, 20 CFR 404.502a incorporated the provision of giving adequate written notice of a determination of overpayment and the right to contest such determination and request waiver of recovery of the overpayment. The provision of giving the opportunity for a hearing before we deny a request for waiver of recovery of the overpayment was incorporated into 20 CFR 404.506(e)(1), which states that the individual is given the opportunity to ''appear personally'' at the personal conference. Current regulations do not further specify the method in which this appearance may be made. Although our policy has been to provide a face-to-face appearance at the field office, this is not always convenient for the beneficiary. Often, if a beneficiary is not able to come to the face-to-face conference, field office personnel will go to the person to hold the conference. Offering additional appearance options for the conference would improve service to the beneficiaries and reduce costly home visits by field personnel.

In order to fulfill our stewardship responsibilities to the Social Security trust fund, we must employ methods that will simplify our personal conference procedures and use our resources most efficiently. We should be using all available technology when we conduct personal conferences. Therefore, elsewhere in this **Federal Register**, we published the final rule ''Methods for Conducting Personal Conferences When Waiver of Recovery of a Title II or Title XVI Overpayment Cannot Be Approved'' which revised the regulations to allow for personal conferences to be conducted face-to-face at a place we designate (usually in the field office), by telephone, or by video teleconference. Consequently, SSR 94–4p is obsolete and rescinded as of February 11, 2008.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 17.307, Coal Mine Workers' Compensation)

Dated: November 30, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–313 Filed 1–10–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 11, 2008.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0566.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6479, or via E-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 35, Washington, DC 20590 (telephone: (202)

493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Reflectorization of Freight Rolling Stock.

OMB Control Number: 2130–0566.

Abstract: The Federal Railroad Administration (FRA) issued this regulation to mandate the reflectorization of freight rolling stock (freight cars and locomotives) to enhance the visibility of trains in order to reduce the number and severity of accidents at highway-rail grade crossings in which train visibility acted as a contributing factor. The information collected is used by FRA to ensure that railroads/car owners follow the schedule established by the regulation for placing retro-reflective material on the sides of freight rolling stock (freight cars and locomotives) in order to improve the visibility of trains. The information collected is also used by FRA to confirm that railroads/car owners meet the prescribed standards for the application, inspection, and maintenance of the required retro-reflective material.

Form Number(s): FRA F 6180.113.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
224.7—Waivers	685 Railroads/Car Owners.	10 petitions	1 hour	20	$740
224.15—Special Approval Procedures—Petitions.	3 Manufacturers	10 petitions	40 hours	400	20,560
—Public Comment	3 Manufacturers/ Railroads.	5 comments	1 hour	5	185
224.107—Implementation Schedule: Freight Cars					
—Existing Freight Cars w/o retroreflective sheeting.	685 Railroads/Car Owners.	400 reports	15 minutes	100	3,700
—Updated Reflectorization Implementation Plans.	685 Railroads/Car Owners.	400 reports	20 hours	8,000	296,000
—Failure Reports	685 Railroads/Car Owners.	5 Failure Rpts	2 hours	10	370
II. Existing Cars with Retroreflective Sheeting (b). Locomotives.	685 Railroads/Car Owners.	172 reports	20 hours	3,440	127,280
—Existing Locomotives w/o Retroreflective Sheeting.	685 Railroads/Car Owners.	35 reports/forms	15 minutes	9	333
—Updated Reflectorization Implementation Plans.	685 Railroads/Car Owners.	35 reports/forms	3 hours	105	3,885
—Failure Reports	685 Railroads/Car Owners.	1 Failure Report	2 hours	2	74
II. Existing Locomotives with Retroreflective Sheeting.	685 Railroads/Car Owners.	617 reports	4 hours	2,468	91,316
224.109—Inspection, Repair, Replacement—Fr. Cars.	AAR + 300 Car Shops.	240,000 Notific	10 minutes	40,000	1,560,000
—Locomotives: Records of Restriction.	22,800 Locomotives	4,560 records	3 minutes	228	10,488

Total Responses: 246,250.

Estimated Total Annual Burden: 54,787 Hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on January 4, 2008.

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–295 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a temporary waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ohio Central Railroad System

[Docket Number FRA–2006–26177]

The Ohio Central Railroad System (OCRS) has submitted a temporary waiver petition to support field testing of its processor-based train control system, identified as the OCRS Positive Train Control (OCRS PTC), pursuant to sections 211.7 and 211.51.

An informational filing, as required under Part 236, Subpart H, has also been prepared and submitted in conjunction with this waiver petition, and can be found in the same docket as this waiver petition (FRA–2006–26177).

The OCRS PTC system is designed to prevent authority limit and overspeed violations in nonsignaled Track Warrant Control territory, and to prevent equipped trains from entering, without authorization, the limits of on-track authority granted to employees.

OCRS desires to commence field testing of the OCRS PTC system in the 4th quarter of 2007, or as soon as practicable thereafter, contingent upon FRA's acceptance and approval of the informational filing and waiver petition. OCRS intends to test and develop the OCRS PTC system on its C&N Subdivision between Columbus and Newark, OH. During this initial test phase, however, OCRS does not intend to activate the OCRS PTC system's locomotive enforcement functionality.

OCRS is seeking regulatory relief for development testing and demonstration purposes only. Specifically, OCRS is requesting regulatory relief from the following FRA requirements:

- Section 216.13 (Special Notice for Repairs—Locomotive),
- Section 217.9 (Program of Operational Tests and Inspections—Recordkeeping),
- Section 217.11 (Program of Instruction on Operating Rules—Recordkeeping, Electronic Recordkeeping),
- Part 218, Subpart D (Prohibition Against Tampering with Safety Devices),
- Section 220.7 (Railroad Communications—Penalty),
- Section 220.29 (Statement of Letters and Numbers in Radio Communications),
- Section 220.37 (Testing Radio and Wireless Communication Equipment),
- Section 220.61 (Radio Transmission of Mandatory Directives),
- Section 229.7 (Prohibited Acts),
- Section 235.5 (Changes Requiring Filing of Application),
- Section 240.127 (Criteria for Examining Skill Performance), and
- Section 240.129 (Criteria for Monitoring Operational Performance of Certified Engineers).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g. Waiver Petition Docket Number FRA–2006–26177) and may be submitted using one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action being taken. Comments received after this date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on January 4, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–312 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 229 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its Railroad Locomotive Safety Standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

(WATCO Companies, Inc.)

[Docket Number FRA–2007–27969]

The WATCO Companies, Inc. (WATCO) seeks a waiver to comply with the requirements in 49 CFR 229.137(b)(iv), which would allow the toilets to be removed from those newly acquired locomotives, which came equipped with sanitation compartments. The total number of these newly acquired locomotives is 53, which were purchased from the after market and only a portion of these locomotives contained sanitation compartments. These locomotives have now been disbursed around the WATCO railroads mixed in with the existing locomotives that are not equipped with sanitation compartments.

WATCO is comprised of the following railroads: Alabama Southern Railroad, Arkansas Southern Railroad, Eastern Idaho Railroad, Great Northern Railroad,

Kansas and Oklahoma Railroad, Louisiana Southern Railroad, Mission Mountain Railroad, Mississippi Southern Railroad, Palouse River and Coulee City Railroad, Southern Kansas and Oklahoma Railroad, Stillwater Central Railroad, Timber Rock Railroad, and Yellowstone Valley Railroad. WATCO claims that all these component railroads have active and accessible outside-of-the-locomotive sanitation plans in place for the employees per § 229.137(b)(iv). WATCO further claims that this would bring uniformity to operations as well as reduce their exposure to the added cost and local environmental compliance for supporting the servicing of the locomotives equipped with toilets.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–27969) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on January 4, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–308 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2007–0051]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes the collection of information associated with NHTSA's regulations in 49 CFR Part 566 *Manufacturer Identification*, which require manufacturers of motor vehicles and motor vehicle equipment that is subject to the standards enforced by the agency to identify themselves and their products to NHTSA. The agency intends to seek OMB approval for this information collection.

DATES: Comments must be received on or before March 11, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. David Coleman, Office of Vehicle Safety Compliance, 1200 New Jersey Avenue, SE., Room W43–488, Washington, DC 20590–0001. Telephone: (202) 366–5302 Refer to: OMB Control Number 2127–0043.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g. permitting electronic submission of responses). In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR Part 566, Manufacturer's Identification.

OMB Number: 2127–0043.

Abstract: Under 49 U.S.C. 30118, if a manufacturer of motor vehicles or replacement items of motor vehicle equipment determines the existence of a defect related to motor vehicle safety or a noncompliance with an applicable Federal motor vehicle safety standards (FMVSS) in one of its products, the manufacturer must furnish NHTSA and affected owners with notification of the defect or noncompliance and remedy the defect or noncompliance without charge. NHTSA issued the regulations in 49 CFR Part 566 *Manufacturer Identification* to permit the agency to identify the responsible manufacturer and send an appropriate inquiry in the event that it learns of a potential safety-related defect or noncompliance in a motor vehicle or motor vehicle equipment item. The regulations require each manufacturer to furnish the agency, with its full name and address, as well as a description of each type of motor vehicle or motor vehicle equipment that it manufactures. The regulations further provide that this information is to be submitted not later than 30 days after the manufacturer begins to manufacture motor vehicles or

equipment subject to the FMVSS. The information specified in 49 CFR part 566 need be submitted only on a one-time basis, but must be revised if there are changes in any of the items submitted (as would be the case, for example, if the manufacturer changed its business address or began to manufacture a new type of motor vehicle). The agency accepts these signed Part 566 submissions as electronic attachments, as Adobe Acrobat (PDF) files, contained in e-mails directed to: *david.coleman@dot.gov*. The agency publishes evidence of its receipt of a manufacturer's submissions on the DOT Internet site at: *http://www.nhtsa.dot.gov/cars/rules/manufacture.*

Affected Public: All motor vehicle and motor vehicle equipment manufacturers producing motor vehicles or motor vehicle equipment covered by a Federal motor vehicle safety standard and intended for sale in the United States.

Estimated Annual Burden: 25 minutes of one staff member's time for each new U.S. market manufacturer, or for each manufacturer revising information previously submitted to the agency.

Estimated Number of Respondents: 630 annually.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *DOT Internet Site: http://dms.dot.gov*. Follow the 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 or Courier:* U.S. DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided.

To receive confirmation that your comments were received, enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

To Read Comments submitted to the Docket: Visit the Docket Management System at the address and times given above.

To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov.*

(2) At that site, click on ''search for dockets.''

(3) Select (*http://www.regulations.gov/fdmspublic/component/main.*)

(4) From the drop-down menu in the Agency field, select ''National Highway Traffic Safety Administration.''

(4) Enter number NHTSA–2007–0051 (the Docket ID).

(5) Click on ''submit.''

(6) The response should contain the docket summary information for this docket.

(7) Click on the comments you wish to see.

(8) You may download the comments. These files are imaged documents (i.e. Adobe Acrobat pdf files) and can be ''word searched'' using a suitable software application. Please note that it is recommended to search the Docket periodically, as new material is added as it becomes available.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Issued on: January 7, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–296 Filed 1–10–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Waybill Sample; Notice of OMB Approval of Information Collection

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of OMB Approval of Information Collection.

SUMMARY: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.11, the Surface Transportation Board has obtained OMB approval for the collection of the Waybill Sample. This collection has been assigned OMB Control No. 2140–0015.

OMB may not approve a collection for longer than three years. Therefore, unless renewed, OMB's approval of this collection will expire on December 17, 2010. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–382 Filed 1–10–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to

respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Assessment of Fees—12 CFR 8.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by February 11, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0223, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0223, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Assessment of Fees—12 CFR 8.

OMB Control No.: 1557–0223.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: The OCC is requesting comment on its proposed extension, without revision, of the information collection titled, ''Assessment of Fees—12 CFR 8.'' The National Bank Act authorizes the OCC to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC. The OCC will require national banks to provide the OCC with ''receivables attributable'' data from independent credit card banks, that is, national banks that primarily engage in credit card operations and are not affiliated with a full service national bank. ''Receivables attributable'' are the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the bank's balance sheet as of that day. The OCC will use the information to verify the accuracy of each bank's assessment computation and to adjust the assessment rate for independent credit card banks over time.

Estimated Number of Respondents: 11.

Estimated Number of Responses: 22.

Frequency of Response: Semiannually.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 22 hours.

The OCC issued a 60-day **Federal Register** Notice on October 26, 2007 (72 FR 60931). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 7, 2008.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8–305 Filed 1–10–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463, Federal Advisory Committee Act, that a meeting of the Health Services Research and Development Scientific Merit Review Board will be held March 4–6, 2008, at the Phoenix Marriott Mesa, 200 N. Centennial Way, Mesa, Arizona. Various subcommittees of the Board will meet during the review period. Each subcommittee meeting of the Merit Review Board will be open to the public the first day for approximately one-half hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications concerned with the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research, Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

On Tuesday, March 4, two subcommittees will convene from 8 a.m. to 5 p.m.—Long Term Care & Aging and Nursing Research Initiative (NRI). On Wednesday, March 5, five subcommittees will convene from 8 a.m. to 5 p.m.—Chronic Disease Management, Equity/Women's Health, Health Services Research Methodology, Implementation and Management Research Science, and Mental Health & Post-Deployment Health. On Thursday, March 6, four subcommittees will convene from 8 a.m. to 5 p.m.—Chronic Disease Management, Health Services Research Methology, Implementation and Management Research Science, and Mental Health & Post-Deployment Health.

After the subcommittees meet there will be a debriefing provided to members to the Health Services Research & Development Scientific Merit Review Board. The purposes of the debriefing are to discuss the outcomes of the review sessions and to ensure the integrity and consistency of the review process.

During the closed portions of the meetings on March 4–6, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by

Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director of Operations (124B), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at least five days before the meeting. For further information, call (202) 254–0207.

By Direction of the Secretary.

Dated: January 3, 2008.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 08–52 Filed 1–10–08; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
January 11, 2008

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1355
Adoption and Foster Care Analysis and Reporting System; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC23

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Administration for Children and Families (ACF) is proposing to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations at 45 CFR 1355.40 and the appendices to part 1355 to modify the requirements for States to collect and report data to ACF on children in out-of-home care and in subsidized adoption or guardianship arrangements with the State. This proposed rule also implements the AFCARS penalty requirements of the Adoption Promotion Act of 2003 (Pub. L. 108–145).

DATES: In order to be considered, we must receive written comments on this notice of proposed rulemaking on or before March 11, 2008.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule via regular postal mail to Kathleen McHugh, Director, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue, SW., Suite 800, Washington, DC 20024. Please be aware that mail sent to us may take an additional 3–4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight, or other special delivery method, please ensure first that they are able to deliver to the above address. You may also transmit comments electronically via e-mail to *CBComments@acf.hhs.gov* or via the Internet at: *http://www.regulations.gov.* We urge you to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the rule, you should access *http://www.regulations.gov/.* Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the above address by contacting Miranda Lynch at (202) 205–8138.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of these comments also may be sent to the Department representative listed above.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director of Policy, Children's Bureau, Administration on Children, Youth and Families, (202) 401–5789 or by e-mail at *kmchugh@acf.hhs.gov.* Do not e-mail comments on the Notice of Proposed Rulemaking to this address.

SUPPLEMENTARY INFORMATION: The preamble to this notice of proposed rulemaking is organized as follows:

I. Background on Foster Care and Adoption Data Collection
II. Consultation and Regulation Development
III. Overview of Major Revisions to AFCARS
IV. Section-by-Section Discussion of NPRM
V. Impact Analysis
VI. List of Subjects

I. Background on Foster Care and Adoption Data Collection

In 1982, the Department, through a grant to the American Public Human Services Association (formerly the American Public Welfare Association), implemented the Voluntary Cooperative Information System (VCIS) to collect aggregate information annually about children in foster care and special needs adoption from State child welfare agencies. While some States reported data to VCIS, by 1986, Congress and other stakeholders recognized that there were a number of weaknesses in VCIS. Namely, VCIS was criticized for intermittent reporting by the States; the use of a variety of reporting periods; a lack of common definitions for data elements; a lack of timeliness of the data, poor data quality, and the collection of aggregate data which had limited analytic utility.

As a result of these and other concerns, the President signed Public Law 99–509 on October 21, 1986, which in part added section 479 to title IV–E of the Social Security Act (the Act). Section 479 of the Act describes the series of steps that the Department of Health and Human Services (DHHS) was required to take to establish a national data collection system for adoption and foster care. We were required to develop a system that avoids unnecessary diversion of resources from agencies responsible for adoption and foster care and assures that the data collected is reliable and consistent over time and across jurisdictions through the use of uniform definitions and methodologies. Furthermore, the law required the system to provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents (biological, foster and/or adoptive parents); the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care); the number and characteristics of children placed in or removed from foster care; children adopted or with respect to whom adoptions have been terminated; children placed in foster care outside the State which has placement and care responsibility; and, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

The President signed into law the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) on August 19, 1993. Public Law 103–66 provides States with the opportunity to obtain title IV–E funds to plan, design, develop, and implement a Statewide Automated Child Welfare Information System (SACWIS). On December 22, 1993, ACF published final rules to establish the AFCARS and implement SACWIS.

In the AFCARS final rule we required States to submit certain data to us on a semi-annual basis about children in foster care and adoptions that involve the State agency. The rule required States that chose to develop a SACWIS to ensure that their system could report information to AFCARS. We also set forth data standards that each State must meet to be considered in compliance with the AFCARS requirements.

States were required to report the first AFCARS data to us for FY 1995. However, it was not until FY 1998, when we implemented AFCARS financial penalties for a State not submitting data or submitting data of poor quality that the data became stable enough for ACF and others to use for a wide variety of purposes.

The President signed the Adoption and Safe Families Act of 1997 (Pub. L. 105–89) in November 1997, which required the use of AFCARS data for two specific activities: The calculation of Adoption Incentive Payments (section 473A of the Act) and the Child Welfare Outcomes Annual Report (section 479A of the Act). Since that

time, data from AFCARS also has been used to provide samples for the Child and Family Services Reviews (CFSR) and title IV–E reviews; to develop outcome and performance measures for the CFSR, the Office of Management and Budget's Program Assessment and Rating Tool (PART) and the Government Performance and Results Act (GPRA); to calculate State allocations for the Chafee Foster Care Independence Program (section 477 of the Act); to generate short- and long-term budget projections; to conduct trend analyses for short- and long-term program planning; and to respond to requests for information from the Congress, other Federal agencies, States, media and the public about children in foster care and children being adopted.

Due to a settlement of several States' appeals of AFCARS penalties, ACF discontinued withholding Federal funds for a State's failure to comply with AFCARS requirements in January 2002 (see ACYF–CB–IM–02–03). However, late in 2003 the President signed the Adoption Promotion Act of 2003 (Pub. L. 108–145), which required ACF to institute specific financial penalties for a State's noncompliance with AFCARS requirements. We notified States in ACYF–CB–IM–04–04 issued on Feb. 17, 2004, that we will not assess penalties until we issue revised final AFCARS regulations, the subject of this proposed rule.

II. Consultation and Regulation Development

In the preamble to the AFCARS final regulation issued in 1993, we indicated that we would revisit the regulations to assess how we may improve AFCARS (58 FR 67917). This proposed rule is the culmination of that process. We undertook an intensive review of every aspect of AFCARS in developing the proposals in this NPRM. We analyzed the types of technical assistance requested by and provided to States, our findings from AFCARS assessment reviews, and reports from the past several years issued by the Government Accounting Office (GAO) and the Department's Office of the Inspector General (OIG) on AFCARS-related issues.

ACF also consulted with the public through a variety of focus groups and a **Federal Register** notice (68 FR 22386, April 28, 2003) seeking comments. More than 80 people participated in the focus groups, and over 40 individuals and groups submitted written comments in response to the **Federal Register** announcement. Thirty-two States, 15 national organizations and 20 interested members of the public provided comments through one or more of these mechanisms.

During consultation we solicited feedback on:

- The specific strengths of AFCARS;
- The specific weaknesses of AFCARS or suggestions for areas of improvement, including ideas about how the suggested improvement could be made and how the Federal government could facilitate the changes;
- Data elements currently in AFCARS that could be deleted and any elements that should be added;
- Strategies to improve data quality for AFCARS, including the use of incentives; and
- How the AFCARS data files are structured and submitted.

Many stakeholders recognized that AFCARS has considerable strengths that include, but are not limited to: The ability to produce timely reports that estimate the number of children in foster care and those being adopted; the ability to support in-depth analyses of case-level data; and the ability to generate information that had not been anticipated when AFCARS was established.

However, commenters also noted that expansion of the use of AFCARS data has highlighted areas that need improvement. For example, there are substantive gaps in the areas covered by the current data elements such as information about adoption disruptions, the placement experiences of sibling groups, the demographics and assistance provided to children under adoption assistance agreements, where children are placed when they are placed out-of-State, and the identification of the different populations served by child welfare agencies (e.g. children in out-of-home care due primarily to their involvement with juvenile justice or their need for mental health services). In particular, stakeholders point out that data from AFCARS is insufficient to support expanded analysis of data for the CFSRs and other performance measures. Many commenters also believe that we need to refine some of the definitions of AFCARS data elements and their response categories (e.g. expand reasons for exit), and how these and other changes in data elements might be facilitated in the future. In addition to the need for new and refined data elements, stakeholders noted that the data structure of AFCARS may need to be revised to take advantage of advances in information technology and/or to make possible the utilization of a wider variety of analytical techniques.

The section-by-section summary provides more discussion on how specific comments factored into our proposal.

III. Overview of Major Revisions to AFCARS

In this NPRM we are focusing our improvements on five general areas: Restructuring the data to capture more information over time; expanding the reporting populations; capturing greater detail on children in out-of-home care; improving the quality of data; and eliminating unnecessary data and inefficiencies in the data submission process.

Restructuring Data

We propose that AFCARS data support longitudinal data analysis by capturing more comprehensive information on a child's experiences in a State's foster care system. The existing AFCARS requires that States report some living arrangement, provider, and permanency information relative to the child's most recent experiences in his/her most recent foster care episode only. We propose instead, that States collect and report information on: (1) The timing and circumstances of each of the child's removals from home and placements in out-of-home care, (2) the timing and type of each permanency plan decision (e.g., reunification or adoption) made for a child, (3) the time span and nature of each living arrangement the child experiences while in foster care, (4) details on each foster family home provider, if applicable, and (5) the timing and circumstances of each of the child's exits from out-of-home care.

Expanding Reporting Populations

We propose to expand the foster care reporting population to include, generally, all children who have been placed away from their parents or legal guardians for whom the State title IV–B/IV–E agency has placement and care responsibility. In doing so, we are also renaming the reporting population as the ''out-of-home care reporting population.'' This reporting population includes children who are in living arrangements that are not traditionally considered foster care under our title IV–B and IV–E program rules. Children who are under the placement and care responsibility of the State agency and are placed in juvenile justice facilities and other living arrangements which are non-reimbursable under title IV–E such as psychiatric treatment facilities are included in the revised AFCARS out-of-home care reporting population. In the existing regulation, children who were in juvenile justice facilities and other facilities not traditionally considered

foster care were included in AFCARS in limited circumstances. We also have expanded our reporting population to include children who are the subject of a guardianship subsidy agreement, whereas these children are not currently reported to AFCARS.

Capturing Greater Detail

We have added and clarified a number of elements so States may provide us with greater detail on the demographics and circumstances of children in out-of-home care. These changes are designed to permit enhanced analysis of the factors that may affect a child's permanency and well-being and include:

- New elements that allow us to identify certain populations of children who are dealing with issues other than child maltreatment, such as children who are involved in the juvenile justice system prior to and during their out-of-home care stay and those who are out of their own homes to obtain mental health services;
- New elements for States to update information on the circumstances affecting the child and family during the child's out-of-home care stay;
- New elements that allow us to identify where more than one family member is in out-of-home care, such as sibling groups and minor parents who have their children with them in out-of-home care;
- New elements to better describe the household composition of the homes from which children are removed and the location and type of living arrangements in which children are placed by the State agency;
- Elements that tell us about a child's well-being including new elements on immunizations and educational performance as well as clarified elements on children's health, behavioral and mental health conditions;
- Revised and new elements that enhance our understanding of domestic and intercountry adoptions, prior adoptions and adoption disruptions, displacements and dissolutions; and,
- Revised and new elements designed to better track State and Federal financial support of foster care, adoption subsidies, adoption nonrecurring costs and guardianships.

Improving Data Quality

We propose to improve AFCARS data quality in several ways. First, we propose to clarify many existing element descriptions that stakeholders informed us were problematic. Second, we propose to strengthen our assessment and identification of errors within a State's data file. In particular, we are proposing to develop cross-file checks to identify defaults and other faulty programming that result in skewed data across a State's entire data file. Finally, we propose to implement penalties for States that do not meet our file and data quality standards for AFCARS consistent with section 474(f) of the Act.

Eliminating Unnecessary Features

We propose to eliminate a number of features in the AFCARS regulation that are no longer useful to us or the States. We propose to dispose of State reporting of summary adoption and foster care files, merge most currently reported adoption information into the foster care data file and take technical submission requirements out of the regulation.

These major changes to AFCARS along with all other features of the proposed database are detailed in the section-by-section discussion below.

IV. Section-by-Section Discussion of NPRM

The reader should note that the proposed regulations will replace in their entirety the existing AFCARS regulations at 45 CFR 1355.40 and the appendices to part 1355. Although we are retaining certain requirements of the existing AFCARS, such requirements are often set forth in different and new sections or paragraphs in this proposed rule.

1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System

In section 1355.40 we propose a scope statement for AFCARS. The proposed scope statement explains which entities must report data to ACF and the data that those entities must report.

Section 1355.40(a)

In paragraph (a), we propose that all State agencies that administer titles IV–B and IV–E of the Act collect and report information to AFCARS. This is consistent with the existing scope of AFCARS and our legislative authority in section 479 of the Act. Currently, all States, the District of Columbia and Puerto Rico operate title IV–B and IV–E programs.

Section 1355.40(b)

In paragraph (b), we describe the scope of the AFCARS requirements. We propose that a State collect and submit to us, on a semi-annual basis, information on a child's experiences in out-of-home care and information on children under adoption assistance and guardianship subsidy agreements.

The scope of the proposed requirements is broader than the current AFCARS in three significant ways. First, the scope of the AFCARS out-of-home care reporting population, currently known as the ''foster care'' reporting population has changed to include, generally, all children who are living away from their parents or legal guardians for whom the State agency has placement and care responsibility. Currently, the AFCARS foster care reporting population focuses primarily on children in foster care settings as defined by the title IV–B and IV–E programs only. Second, we are expanding the scope of certain information to include a child's entire historical and current experience in out-of-home care so that we can establish a more comprehensive and longitudinal database. Currently State agencies report to AFCARS limited information on a child's most recent and first foster care episode during the report period. Finally, we propose that States report on children involved in adoption agreements and guardianship subsidy arrangements on an ongoing basis. At the present time, State agencies report to AFCARS information on finalized adoptions in which the State agency was involved at the point of finalization only. In large part, we are expanding the scope of AFCARS data in response to overwhelming support for doing so from stakeholders and to meet our program needs. The full extent of these proposed changes is explained further in subsequent sections on the reporting population and data elements.

A few commenters suggested that ACF also consider expanding the scope of AFCARS to require State agencies to collect and report detailed information on children who receive child welfare services in their own homes. We believe that requiring States to report data on these activities to AFCARS exceeds our existing legislative authority in section 479 of the Act. Even so, we wish to note that AFCARS is not the sole data-related activity in child welfare that ACF manages. Through the National Child Abuse and Neglect Data System (NCANDS), States voluntarily provide us with data on child maltreatment and the extent to which the State child protective services agency provides services. We encourage State agencies to use the same unique person identifiers in AFCARS and NCANDS so that we can understand to what extent children receive prevention services before they must enter out-of-home care. In addition, we have proposed a mandatory reporting system under the Chafee Foster Care Independence

Program (section 477 of the Act) which, in part, will require States to submit detailed information on the independent living services they provide to youth who are in foster care, or who have aged out of foster care (see 71 FR 40346). In that NPRM we propose to require States to use the same unique person identifier (child case or record number) for reporting a child's independent living services as they do for AFCARS. We believe, therefore, that we have adequate provisions for States to report on how they serve our nation's most vulnerable children and families without exceeding our legislative authority for AFCARS.

Section 1355.40(c)

In paragraph (c) we define the scope of out-of-home care for AFCARS purposes which serves as a basis for the out-of-home care reporting population. ''Out-of-home care'' refers to children who have been placed away from their parents or legal guardians for a period of 24 hours or more and for whom the State title IV–B/IV–E agency has placement and care responsibility, regardless of the child's living arrangement. This is different than our programmatic definition of foster care in 45 CFR 1355.20, and thus the scope of the current AFCARS foster care reporting population (see 45 CFR 1355.40(a)(2) and appendix A to part 1355, section II) in a number of ways. The most significant difference between the two terms is that the proposed AFCARS definition of out-of-home care will include children who are placed away from their parents for whom the State title IV–B/IV–E agency has placement and care authority, irrespective of their living arrangement. This stands in contrast to the foster care definition used for the title IV–B and IV–E programs in 45 CFR 1355.20 and policy in the Child Welfare Policy Manual Section, which incorporates traditional foster care settings only (e.g., foster family homes, child care institution and group homes).

We believe it is essential to develop a definition of out-of-home care for the purpose of data reporting distinct from the definition of foster care for the Federal child welfare programs, to meet their separate goals. The programmatic definition of foster care is for the purposes of describing the population for whom States must meet Federal child welfare requirements for safety, permanency and well-being as described in titles IV–B and IV–E of the Act and 45 CFR 1355, 1356 and 1357. Nothing in this proposal changes to whom the Federal child protection requirements apply. AFCARS, on the other hand, has as one of its central goals as described in section 479 of the Act, the ability to provide comprehensive national information on the dynamics of children in the foster care system, including ''the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),'' and ''the number and characteristics of children placed in or removed from foster care.'' Our experience with AFCARS is that the existing data on the number of children in foster care, the length of placements, and the characteristics of children as they move in and exit foster care is incomplete and often misleading without additional information about when children move from those out-of-home care living arrangements that are within the scope of foster care to detention facilities, psychiatric hospitals, assessment centers, and other facilities that are outside the scope of foster care. Particularly, as we have conducted AFCARS assessment reviews and CFSRs in many States, we have been challenged in pinpointing the scope of each State's foster care system and therefore, whether certain Federal child welfare requirements apply. By defining the AFCARS out-of-home care reporting population broadly, along with more specifically defining the type of living arrangements and circumstances of a child's stay in out-of-home care we believe that we can better track how and why children enter foster care, understand the dynamics of State foster care systems, and distinguish the subpopulation for whom State child welfare agencies are accountable to meet the Federal child protection requirements (section 422(b)(8)(A) of the Act).

We have specified in this proposed regulation that for AFCARS, we are seeking information on children who are under the placement and care of the State agency and away from their parents for 24 hours or more. This timeframe has not changed. However, the timeframe was noted in an appendix to the regulation rather than in the regulation text itself. We see no reason to include children in AFCARS who have been out of their homes for fewer than 24 hours.

The proposed regulatory definition of out-of-home care also clarifies that the term refers to children who are considered minors according to the State's age of majority. This proposal is consistent with existing AFCARS policy (Child Welfare Policy Manual 1.3) and our regulatory definition of children at 45 CFR 1357.10(c) for the programs under title IV–B of the Act. We understand that most States consider young people up to age 18 as children. Several States, however, consider older youth (i.e., up to age 21) who are in their placement and care responsibility as minors.

1355.41 Reporting Populations

We propose to add a new section 1355.41 on reporting populations to this part.

Section 1355.41(a) Out-of-Home Care Reporting Population

In paragraph (a), we propose a new out-of-home care reporting population which identifies children States must include in an AFCARS out-of-home care data file. In general, we propose that State agencies must report information to AFCARS consistent with the AFCARS out-of-home definition; that is, all minor children who have been placed away from their parents or legal guardians for a period of 24 hours or more and for whom the State title IV–B/IV–E agency has placement and care responsibility.

In subparagraphs (a)(1)(i) through (a)(1)(iv), we propose to expound on which children are included in the reporting population. Although some of the children described in these subparagraphs are covered implicitly in the reporting population as generally stated in paragraph (a)(1), the subcategories provide more detail on the scope of the reporting population.

In subparagraph (a)(1)(i), we propose to clarify that the reporting population is inclusive of any child who is under the placement and care responsibility of another public agency that has an agreement under section 472(a)(2)(B) of the Act with the title IV–B/IV–E agency for the payment of foster care maintenance payments on the child's behalf. This provision is consistent with existing AFCARS regulations that define the foster care reporting population (Appendix A to 45 CFR 1355, Section II). Typically, State agencies enter these agreements with Indian tribes, and separate juvenile justice agencies or mental health agencies in order for the State to claim title IV–E on behalf of children who are otherwise eligible for the foster care maintenance payments program. These other public agencies do not submit information on children in the reporting population to ACF separately from the title IV–B/IV–E State agency. Rather, this information must be a part of the title IV–B/IV–E State agency's AFCARS submission.

In subparagraph (a)(1)(ii), we propose to codify existing policy that a State

continue to collect and report information to AFCARS for as long as the State is making title IV–E foster care maintenance payments on the child's behalf, regardless of the State's age of majority (Child Welfare Policy Manual 1.3 #2). Under the title IV–E program, the State is permitted to make foster care maintenance payments for young people who have attained 18 years of age, but not yet 19 years of age, who are full-time students expected to complete their secondary schooling or equivalent training before reaching age 19 (Child Welfare Policy Manual 8.3A.2 #1). We acknowledge that this condition may require the State to report data beyond the State's age of majority as described in 1355.40(c). However, this provision is necessary to allow us to track the extent of assistance and the characteristics of all children for whom State agencies make Federal foster care maintenance payments consistent with section 479(c)(3)(D) of the Act.

In subparagraph (a)(1)(iii), we propose to include in the out-of-home care reporting population a child under the State agency's placement and care responsibility who is in any living arrangement, regardless of whether that living arrangement is a traditional foster care setting. We explain that States are to include children in out-of-home care who are placed in settings such as detention facilities, psychiatric or other hospitals, and jails, but this is not an all-inclusive list. The specified facilities have been raised most frequently in questions by State agencies because some youth may transition in and out of traditional foster care settings and these facilities. We want to clarify explicitly that a child who is in a living arrangement that is not a traditional foster care setting is a part of the AFCARS out-of-home care reporting population if the child is away from his parents or legal guardians while under the State title IV–B/IV–E agency's placement and care, even if the child remains in that setting for the entire report period. We understand that, in practice, most State agencies may not have included these children in the AFCARS foster care population to date, since our current policy does not require this reporting. Our current policy requires only that a State report a child who moves from a traditional foster care placement to a juvenile justice placement, as long as the State intends to return the child to foster care (Child Welfare Policy Manual 1.3 #12).

As discussed previously, we believe that it is beneficial to compel State agencies to collect and report information to us on an ongoing basis when the child is under the State agency's placement and care responsibility away from his parents or legal guardians, regardless of the setting. We believe that doing so will allow us to follow a child through the various out-of-home placement settings that are connected closely to the foster care system but may not be managed by the State child welfare agency directly. Including these settings will permit States and ACF to complete longitudinal analyses of children's out-of-home care experiences, as advocated by States and others in the field. In addition, we believe that requiring State agencies to submit information on a child's entire experience while under the placement and care responsibility of the State, rather than having to generate information based on identifying select types of settings, will be less burdensome. We welcome comment on this proposal.

The reader should note that although the State will report all children placed away from their parents and legal guardians under its placement and care authority regardless of the child's living arrangements, States and ACF will be able to identify children who are in the narrower definition of foster care as defined by our program rules. This is because we are proposing to better categorize a child's living arrangements in the data elements. We will, therefore, be able to select samples for reviews or other analyses that look at foster care as used in the title IV–B and IV–E programs separately from other living arrangements.

In subparagraph (a)(1)(iv), we require that a State continue reporting a child to AFCARS who is missing or has run away, is attending camp or on vacation, or is visiting with his immediate or extended family. In these situations, the child remains in out-of-home care under the agency's placement and care responsibility. These situations do not represent a State agency's need to move the child.

Finally, in paragraph (a)(2) we propose that the State discontinue reporting a child to AFCARS if the State agency's placement and care authority ends (or is discharged), if the State agency returns the child home to his or her parents or legal guardians, or the child reaches the age of majority unless such a child continues to receive title IV–E foster care maintenance payments. The child has exited the reporting population for AFCARS purposes and has completed an out-of-home care episode in these circumstances. This provision is, in part, a departure from the existing regulation. Many States over the years and during consultation have highlighted the need for more definitive guidance on when the child should be considered to have exited the AFCARS reporting population. States have pointed out that when a child leaves the AFCARS reporting population is of critical importance in defining consistently the length of time a child stays in foster care, as well as re-entries into foster care, for the CFSRs and other Federal child welfare outcome measures.

We propose to continue State reporting of information until the child is no longer under the agency's placement and care responsibility because we are interested in understanding the child's entire out-of-home experience. Children who are legally discharged from the State agency's placement and care responsibility have always been considered to have exited foster care under the existing AFCARS requirements. This would include children who may remain away from their parents or legal guardians but whose placement and care responsibility are transferred to another agency with no connection to the State agency.

However, we propose for the first time that children who are returned home to their parents or guardians be excluded from the AFCARS reporting population. Previous policy suggested that a State report to AFCARS children who were returned home and supervised by the State agency in an after-care status for a period of six months, unless a court order indicated another time period (Child Welfare Policy Manual 1.2B.7 #7 and 1.3 #11). Because we do not have a specific response option for States to report children in an after-care status in the existing AFCARS, we have instructed States to report the child on a trial home visit. There is, however, a distinction between a child who is *visiting* home, whether to stay connected to his or her family or to try reunification, and a child who the State agency has *returned* home. We agree with the States that contend that even though a State may continue to have some ongoing role in supervising or monitoring the child in his home, the child is no longer in out-of-home care for all practical purposes, but is at home. Furthermore, some State courts do not discharge a State's placement and care responsibility routinely, or in a timely fashion; sometimes this event occurs months after a child is in his or her own home. We concur that children in these situations should not be considered to be part of the AFCARS out-of-home care reporting population so as not to distort a child's length of

stay in care. We welcome comments on this proposal.

We also want to clarify here that the proposed out-of-home care reporting population does not include those children who are under the State agency's ''supervision'' authority, unlike the current regulation. We found the reference to supervision to be problematic because we never defined the term ''supervision'' further in AFCARS regulations or policy. Thus States have questioned whether the existing reporting population includes children in a variety of settings for whom the State agency has only a legal duty to supervise with no concurrent placement and care responsibility. We wish to be clear that children who are receiving services only in the homes of their parent or legal guardian(s) and children who may be placed away from their parents or legal guardians but for whom the State title IV–B/IV–E agency has no placement and care responsibility are not a part of the proposed AFCARS out-of-home care reporting population.

Section 1355.41(b) Adoption Assistance and Guardianship Subsidy Reporting Population

In subparagraph (b)(1), we propose that the State include information on all children for whom there is either a title IV–E adoption assistance agreement or a State adoption assistance agreement in effect during the report period. This includes children in a pre-adoptive living arrangement. Children under such adoption agreements are a part of the reporting population regardless of whether a financial subsidy is paid on the child's behalf. We believe that requiring State agencies to collect and report information on these populations is necessary since there is no reliable information on these populations other than State claims data for Federal adoption funds, which have substantial analytical limitations.

As a result of successful adoption initiatives, some States now have more children receiving adoption assistance than receiving foster care maintenance payments. With the increased activity in adoption and the corresponding outlays for the program, there has been an increase in requests for information about the population from the Congress, States, the media, and other sources. There also is a growing need at the Federal level for information to use for planning and budget projection purposes.

Children who are in out-of-home care and who are the subject of a title IV–E adoption assistance agreement are likely to show up in both the out-of-home care and adoption assistance subsidy files until the point of the finalization of the adoption. In part, this is because sections 473 and 475(3) of the Act require States to enter into title IV–E adoption assistance agreements with adoptive parents prior to the finalization of a child's adoption, during which time the child may remain in out-of-home care. This may be true of children under State adoption assistance agreements as well, depending on State requirements. However, we believe we need this duplication of data in order to get complete information on the child's out-of-home care and adoption assistance experiences. Since we understand that the time between when an adoption assistance agreement becomes effective and the finalization of the child's adoption is relatively short, we expect such duplication to be limited. We welcome comments on this proposal.

In subparagraph (b)(2), we seek information on children on whose behalf a subsidy is paid pursuant to a guardianship agreement with the State agency because we are interested in providing a national picture of children in these arrangements for the first time. We are not proposing that States include in the reporting population children who may be the subject of a guardianship or guardianship agreement in which a financial subsidy is not paid to the child's guardian. We believe that non-subsidized guardianships are a small portion of the guardianship arrangements in which State agencies are involved, that States maintain little information on them and there exists no compelling interest for ACF to require States to report information on these arrangements.

States provide guardianship subsidies to a legal guardian for the care and support of a child who may be at risk of entering foster care or who may have otherwise remained in foster care. Although there is no Federal requirement or entitlement funding for States to provide guardianship subsidies, we understand that more than half of the States provide these supports to encourage greater permanency for children for whom adoption and reunification have been ruled out.

States have established subsidized guardianship programs using State and local funds and funds from the Temporary Assistance for Needy Families Program. Seven States have obtained a child welfare demonstration waiver pursuant to section 1130 of the Act to test the effectiveness of a subsidized guardianship program for children in foster care. The demonstration waivers provide States with greater flexibility to use title IV–B and title IV–E funds for services that can facilitate improved safety, permanency and well-being for children. (Our authority to permit States to conduct new waivers expired in March 2006). Our proposed reporting population includes children in any subsidized guardianship arrangement regardless of the source of funding.

1355.42 Data Reporting Requirements

We propose to add a new section 1355.42 on data reporting requirements, including the report periods for the data files, general provisions for collecting and submitting the out-of-home care and adoption assistance and guardianship subsidy files, and record retention rules to comply with AFCARS requirements.

Section 1355.42(a) Report Periods and Deadlines

In paragraph (a), we propose that each State submit an out-of-home care data file and an adoption assistance and guardianship subsidy data file to ACF on children in the reporting populations on a semi-annual basis. The report periods extend from April 1 to September 30 and from October 1 to March 31 of each Federal fiscal year. These report periods are the same as in the existing AFCARS.

Several stakeholders suggested that we consider moving to annual, or even less frequent reporting, rather than semi-annual reporting of AFCARS data. Many commenters were concerned about the perceived complications of ACF compiling an annual file from two semi-annual submissions for the purposes of the CFSRs and the annual outcomes report to Congress. We want to assure States that we are able to create an annual file. We believe that some States' concerns about compiling an annual file were related to their inability to replicate the information from ACF precisely. ACF has recently started using a readily-available software program. The logic associated with this software's de-duplication function is readily transferable to other software packages; therefore, States will be able to replicate the annual files more easily. Finally, we expect that the new requirements proposed here for using a permanent and encrypted person identification number (see proposed 45 CFR 1355.43(a)(4), 1355.43(a)(5) and 1355.44(a)(3) in this NPRM) will aid both our own and States' ability to create annual files.

Further, we believe that an annual submission would hamper our ability to provide timely data and analysis to stakeholders and would not meet our needs. A six-month submission process

is preferable because AFCARS is now linked inextricably to a number of ACF priorities and legislative requirements, including the CFSRs and title IV–E eligibility reviews. For example, most States are monitoring their progress in achieving the steps of their CFSR program improvement plans on a quarterly basis. Because States submit AFCARS twice a year, we can provide States with their results on the statewide data indicators every six months for comparison. A move to annual submissions would mean that a State would not be able to use AFCARS data to see how it has improved as timely. Annual data would add six additional months to the time it would take ACF to verify whether a State has achieved the agreed upon amount of improvement for a CFSR program improvement plan. Also, annual AFCARS submissions would mean that our period under review for the CFSR onsite review would need to be extended and we could not review States as frequently because they are tied to the AFCARS report period. Finally, the title IV–E eligibility reviews require that we select a sample of children who received foster care maintenance payments during a six-month period that coincides with the State's most recent AFCARS submission (45 CFR 1356.71). In formulating the title IV–E reviews, we chose a recent six-month AFCARS period specifically so that we would review recent cases of children in foster care.

We also propose in paragraph (a) that State agencies submit their data files to us within 15 calendar days of the end of the report period. If this date falls on a weekend, the State must submit their files by the end of the following Monday. This is a change from the current AFCARS, which allows a 45-day period in which State agencies may prepare their data files for submittal to ACF. Although some stakeholders requested more time to prepare their files, we believe that the shorter time frame is workable and will also better meet State and Federal needs for data.

As mentioned earlier, AFCARS data is used extensively in a number of ACF priorities and requirements, including the Child and Family Service Reviews. If ACF receives the data a month earlier than we do now, we will be better able to analyze the data for use in CFSR data profiles and program improvement plans. Also, since adoption incentive funds are tied to how well States perform in increasing their adoptions as seen in the AFCARS data, we can award adoption incentive funds to States sooner.

The vast improvements in automation in the field of child welfare strengthen our belief that a State can prepare data files within 15 days. Now States can record and verify data in a more timely fashion than when the original AFCARS regulation was issued. Finally, we have provided significant technical assistance to States to encourage ongoing quality assurance checks on the data recorded in their information systems. We believe that State agencies will be able to meet this shorter time frame for submitting data with continued and routine use of our data quality utilities. We welcome comment on the shorter submission time frame.

Finally, in paragraph (a) we require that State agencies submit their data to us in two separate data files. Currently, State agencies must submit four data files (Appendices A and B to 45 CFR 1355): (1) A detailed foster care file with information on a child in foster care during the report period; (2) a detailed adoption file with information on all children adopted during the report period in whose adoption the State agency has some involvement; (3) a foster care summary file in which the State indicates the total number of foster care records and the age distribution of children in those records; and, (4) an adoption summary file in which the State indicates the total number of adoption records and the age distribution of the children adopted.

We propose to eliminate the existing foster care and adoption summary files because they are no longer necessary. ACF originally intended to use the summary files to verify the completeness of a State's data submissions and to ensure that the file was not corrupted during transmission. The summary files also were to serve as a quick count of the number of children in foster care and those being adopted. However, because the summary files contain aggregate data, the number of children who entered, were discharged, were adopted, were served or were in care on a specific day cannot be determined. Further, we are able to use new technology that is better able to verify the completeness of a State's data submission without requiring the State to generate summary files.

The proposed out-of-home care data file contains the majority of information that State agencies report to us currently in the detailed foster care and adoption data files. We propose to discontinue the submission of voluntary adoption data and eliminate the separate adoption data file. Rather, children who are adopted from out-of-home care will be included in the out-of-home care data file, and children for whom the State agency has been involved in their adoption by entering into an adoption assistance agreement will be included in the adoption assistance and guardianship subsidy data file (some children will be reported in both files). The current separate adoption data file was developed originally to permit State agencies to submit data on all adoptions (inclusive of private, independent, or international adoptions in which the State agency was not involved) without the data appearing erroneous due to duplicated information that may have resulted from States' obtaining the data from a variety of sources. For example, had States obtained their data on all adoptions from court records and incorporated that data into the foster care data file, public agency adoptions would have been duplicated. This strategy was based on the premise that State agencies would voluntarily submit data on adoptions outside of the public agency. However, just a few States have submitted non-public agency adoption data consistently, making the information unusable.

Section 1355.42(b) Out-of-Home Care Data File

In paragraph (b), we provide instructions on how the State must report the out-of-home care information under the proposed 45 CFR 1355.43.

Specifically, in paragraph (b)(1), we propose that a State provide us with the most recent information for the elements regarding general information, child information, and parent or legal guardian information (proposed 45 CFR 1355.43(a), (b) and (c)). This means that in each file submission we are seeking current, point-in-time data for these elements similar to the time frame for most elements in the existing AFCARS. This information is largely demographic in nature, and tends to remain static over a six-month report period or even longer. For example, information on the child's parent, such as race, ethnicity and date of birth, does not change over the course of a report period.

In paragraph (b)(2), we propose that a State submit recent and historical information for the elements regarding removal information, living arrangements and provider information, permanency plans and ongoing circumstances, general exit information, and exit to adoption information (proposed 45 CFR 1355.43(d), (e), (f), (g) and (h), respectively). This information is required, unless the exception described below applies. This means that for every file submission, we are seeking information on the child's lifetime experience while in out-of-home care in the State's placement and

care responsibility as described through the reporting of these elements. This will allow ACF to develop a comprehensive picture of a child's lifetime experience with entries, living arrangements, permanency plans, and exits while in the State's child welfare system. This is in contrast to the existing AFCARS, which requires that a State submit certain detailed information on the child's current foster care episode and current placement setting only.

We want to be clear that we propose that State agencies submit recent and historical information pertaining to removals, permanency plans and circumstances, living arrangements and exits every report period rather than updates on children who were in out-of-home care before or who remain in out-of-home care from one report period to the next. This is because we have learned from the existing structure of AFCARS that gaps in information raise numerous questions about the child's experiences and make the data more difficult to analyze. Part of our goal in developing this proposed regulation is to eliminate features of the existing AFCARS that hinder the collection of reliable, quality data. If we were to ask State agencies to report only changes in the child's living arrangements, permanency goals, entry into or exit from out-of-home care we would not have a way to verify that the child's experiences have, in fact, remained the same. We also believe that this approach is less burdensome on States. Although sending a child's history involves submitting more data to us than an update as children exit and re-enter out-of-home care and their living arrangements and permanency plans change, we believe that it is less complicated and therefore requires fewer State resources than the alternative. In other words, sending a child's full history requires the State to submit all the information it has on these elements, rather than figure out a way to cull out only the information that has changed each report period.

We propose to get more comprehensive data for certain elements in response to our own need for data and in response to stakeholders' requests that ACF consider how to move AFCARS towards gathering some longitudinal information. Many States noted that they already have this capability. A number of States also asserted that the breadth of this information allowed them to conduct more sophisticated analysis on what happens to a child, or groups of children in foster care. Further, States and other stakeholders saw this type of information as critical to the CFSRs. In particular, stakeholders believe that longitudinal data would better inform CFSR measures such as time in foster care, foster care re-entries and the stability of foster care placements. For example, once we have information on all out-of-home care episodes a child experiences, we can potentially analyze data to determine whether children entering out-of-home care for the first time after a certain point in time have more positive outcomes than those who entered out-of-home care earlier. Also, we can potentially use the data to improve upon our placement stability measure by not only analyzing the number of placements that a child experiences in an episode, but the type of placements as well. Further, with the richness of data that longitudinal information can provide, ACF and States can be better informed in developing and implementing program improvement plans to address compliance issues raised during a CFSR. In light of the results of the first round of CFSRs and the challenges that are ahead for States in implementing changes to their child welfare systems, we find the potential to have improved data for use in the CFSR and other priorities a compelling reason for proposing these changes. We welcome comments on this approach.

We chose to propose gathering comprehensive data on removals, permanency plans and ongoing circumstances, living arrangements and exits after considering whether a more limited approach to developing longitudinal data would meet our needs for data, as well as those of the States. The limited option would require a State to submit detailed removal, permanency plan, living arrangement and exit information on the child's four most recent out-of-home care episodes. We also considered requiring detailed living arrangement information on the child's four most recent living arrangements only. Under this option, the State would inform us how many total removals and living arrangements the child had experienced. We considered four out-of-home care episodes because our analysis of existing AFCARS data suggests that the vast majority (approximately 99 percent) of children in the existing foster care reporting population have no more than four foster care episodes. This option would allow us to capture almost all foster care episodes without requiring State agencies to submit extensive histories on children. We similarly thought that limiting the number of living arrangements that State agencies would report to AFCARS would minimize the burden of this approach.

Ultimately, we decided that this more narrow approach was not sufficient. One problem with a limited longitudinal database was that we would have no information on the children who present some of the more significant challenges to States. Children who experience high numbers of multiple living arrangements or frequently enter and exit out-of-home care are some of the nation's most vulnerable children. Furthermore, these children often require States to expend more of their resources to address their problems.

In paragraph (b)(3), we propose an exception to the requirement to report complete information on all out-of-home care episodes for children in the reporting population. The exception applies to those children who had an out-of-home care episode prior to the effective date of the forthcoming final rule. Specifically, the exception applies to: (1) Children who are in out-of-home care on the effective date who also had a prior episode before the final rule goes into effect, and (2) children who enter out-of-home care after the effective date who had a prior episode before the final rule goes into effect. For such children, we are proposing that the State report the child's removal dates, exit dates and exit reasons (1355.43(d)(1), (g)(1), and (g)(3) respectively) for each out-of-home care episode that occurred before the final rule effective date. The exception does not apply to a child's ''open'' or ongoing episode that coincides with the effective date of the final rule; for such children we propose that a State report all information described in paragraphs (b)(1) and (b)(2) during that ongoing out-of-home care episode. As time passes after the final rule goes into effect, this provision will apply to a diminishing number of children who are in the out-of-home care reporting population.

We propose this exception to the general rule to report complete information in order to strike a balance between our desire for recent and historical information on all children in out-of-home care in accordance with the proposed new AFCARS elements with the challenge that some State agencies may face in gathering this information for a child's previous contacts with the State child welfare system before these new rules go into effect. We chose to have State agencies report at least the child's prior removal and exit dates and exit reasons, because we believe these elements are most critical to our ability to construct certain cohorts of children for analysis in the CFSRs and other outcome-based activities. Further, States

currently collect this information in the normal course of their casework activities for children in foster care and report some information for these elements under the existing AFCARS.

Our expectation is that for children who experience an out-of-home care episode prior to the implementation of the proposed new AFCARS, States will report more than the minimum information required by the exception. We expect, but do not require, States to provide as much information as they have in their case files and information systems on the child's out-of-home care episodes that occur before the effective date of the final rule and at least as much information as they report currently under the existing AFCARS. States that do not provide this additional information will not be penalized. States that provide it with errors will not be penalized either. From our review of States with a SACWIS, we have found that many States are collecting comprehensive information and information that pertains to the proposed new elements. Therefore, we believe that it is reasonable to expect States to provide us with information on the new elements regarding prior episodes even in the absence of a mandate. In fact, we considered establishing different exceptions to the requirement to report comprehensive information for those States that have an operational SACWIS versus those that do not because we believe that the type of information they are able to collect and report is more complete and robust than other States. Even so, since this is the first time we are requiring certain information in AFCARS, we believe that we must allow all States an equal opportunity to collect the proposed information for children who already are known to the State.

Finally, we acknowledge that even though we propose that States report a child's removal and exit dates and exit reasons of the out-of-home care episodes that occur prior to the final rule effective date, this limited information will be newly required for some children in certain circumstances. In particular, since we propose to expand the reporting population to include children who are in out-of-home care settings that are not considered foster care under our program rules, States have not consistently reported removal and exit dates and exit reasons for AFCARS purposes. Further, since the existing AFCARS requires that States report the date of first and latest removal and exit reason for the most recent foster care episode in a six-month period, some children may have interim removal dates and exit dates and reasons that States currently are not reporting to us. We still believe, however, that while this proposed reporting may be newly required, States generally have this information as a matter of course in their own information systems and this requirement would not produce an undue burden. We welcome comment on this provision.

Section 1355.42(c) Adoption Assistance and Guardianship Subsidy Data File

In paragraph (c), we propose that the State submit recent, point-in-time information for all elements in this data file. This information is needed only at a given point in the report period because it is static over time. For example, adoption subsidies may remain the same over many years or for the duration of the adoption assistance agreement, unless the parent requests a change in the amount of the subsidy, or the child's circumstances change.

Section 1355.42(d) Reporting Missing Information

In paragraph (d), we propose how the State must report missing information. If the State agency fails to collect the information for an element, the State agency must report the element as blank or missing. The State agency may not develop program codes that default or map information that caseworkers did not collect or enter into the State's information system to a valid response option. This is the case even when there may be a response option for an element that allows the State to indicate that the information has not yet been determined or is unknown. This provision is consistent with ACF's longstanding practice; however, States have pointed out that there is no official guidance on this issue. Therefore, we wish to state unequivocally that this practice of defaulting is not permitted.

For example, we propose that the State indicate the specific permanency plan for a child or indicate that the permanency plan has not yet been determined for the child. If the State's information system is programmed in a way to allow the worker to select various plans (i.e., adoption, reunification, etc.) or not input the information at all (i.e., leave the information blank), the State agency may not report to ACF the child's plan as ''not yet determined,'' when the State does not have any information. Rather, the State may only report that the plan is ''not yet determined'' if the State has programmed its information system in a way that allows the worker to select that he/she has actually not yet determined the plan.

Section 1355.42(e) Electronic Submission

In paragraph (e) of this section we propose that States submit their data files to ACF electronically, consistent with ACF's specifications. States currently submit their data files to us electronically; however, we are removing from the regulation a number of technical specifications that detail how States must submit their files electronically (see appendix C to part 1355). Instead, we will issue technical requirements and specifications through official ACF policy subsequent to our issuance of the final rule. We have learned through our experience with the existing AFCARS that it is prudent not to regulate the technical specifications for transmitting data. As technology changes, we must be able to keep pace with the most current, practical and efficient transmission methods that will meet State and Federal needs.

We are particularly interested in exploring new technologies due to the enactment of the E–Government Act of 2002 (Pub. L. 107–347). This law focuses the Federal government on using improved internet-based technology to make it easier for State or local governments and citizens to interact with the Federal government. One internet-based technology that we are exploring for AFCARS is the use of Extensible Mark-Up Language (XML). XML is a text-based format that allows entities to describe, deliver and exchange data among a range of applications, provided that the sender and receiver have agreed in advance on the data definitions. We believe that XML has several benefits to States and ACF, including:

- Enabling the integration and collation of any data and information irrespective of storage environment or document type;
- Facilitating data interchange independent of the operating system and hardware; and,
- Allowing new data elements to be added readily with minimal changes to the data file format.

We recognize that some States already have implemented the use of XML to transfer data, while others may have encountered some barriers to doing so.

Section 1355.42(f) Record Retention

In paragraph (f), we propose that States retain records for as long as necessary to comply with the AFCARS reporting requirements. In particular, we are making Departmental record retention rules in 45 CFR 92.42(b) and

(c) inapplicable to AFCARS. These Departmental record retention rules require States to retain financial and programmatic records, supporting documents, and statistical records related to Federal programs and requirements for a period of three years. Because we are seeking comprehensive data on children in out-of-home care, including information on their prior experiences with the child welfare system, a three-year retention period is insufficient.

Practically, this means the State must keep applicable records until the child reaches the age of majority in the State, or else is no longer of an age to be in the reporting populations. This is because we propose that a State keep a child's identification number consistent over time and indicate the child's entire history with the child welfare system. Since a child's information is likely to be contained in an automated information system and relatively simple to archive, we believe these record retention rules are reasonable.

1355.43 Out-Of-Home Care Data File Elements

We propose to add a new section 1355.43 providing all elements for the out-of-home care data file. Under this section, each element is described in detail and the acceptable response options are also defined. (Attachment A to the preamble contains a quick reference of all the out-of-home care elements.) We propose that the State agency must collect and report the information described in these elements for each child in the out-of-home care reporting population.

Section 1355.43(a) General Information

In paragraph (a) of this section we propose that States collect and report general information that identifies the reporting State and the child in out-of-home care.

State. In paragraph (a)(1), we propose that the State responsible for reporting the child identify itself using the numeric two-digit State Federal Information Processing Standards (FIPS) code. We use the FIPS code because it is a standard issued by the National Institute of Standards and Technology (NIST) to ensure uniform identification of geographic entities through all Federal government agencies. The requirement for the State to identify itself is not new (see appendix A to part 1355, section II, I.A); however, the existing regulation incorrectly requests that the State use the alphabetic U.S. Postal Service abbreviation rather than the FIPS code. We corrected this mistake in policy (Child Welfare Policy Manual 1.2A.3 #1 and 1.2B.2 #4), but are now codifying it in regulation.

Report date. In paragraph (a)(2), we propose that a State continue to indicate the report period date (see appendix A to part 1355, section II, I.B). Specifically, States are to report to us the last month and year that corresponds with the end of the report period, which will always be either March or September of any given year.

Local agency. In paragraph (a)(3), we propose that the State report to us the local agency that has responsibility for the child using a five-digit FIPS code. The local agency must be the county or a county equivalent unit which has responsibility for the child. The information requested is the same as in the existing AFCARS regulations (see appendix A to part 1355, Section II, I.C). However, consistent with existing policy we want to emphasize that we are interested in the location of the agency that has responsibility of the child, and not the county where the child is residing (Child Welfare Policy Manual 1.2B.2 #3).

Child record number. In paragraph (a)(4), we propose that the State report the child's record number, which is a unique person identification number, as an encrypted number. The person identification number must remain the same for the child until the age of majority, no matter where the child lives while in the State's placement and care responsibility and across all report periods and episodes of out-of-home care. If the child was previously adopted in the State, however, the State may provide a new record number for the child. The State must apply and retain the same encryption routine or method for the person identification number across all report periods. The State's encryption methodology must meet all ACF standards that we prescribe through technical bulletins or policy.

This is a revised element in that we are no longer allowing the use of sequential numbers for AFCARS and propose rules for encryption and consistent numbers (see appendix A to part 1355, section II, I.D). The changes to this element are based on findings from AFCARS reviews and technical assistance which indicate that some States use different identification numbers or change key or seed numbers for the same child. One issue that has been identified in some States that do not have a SACWIS is that the child's record number may change if the child moves within the State. We are concerned about a State's ability to track a child's complete out-of-home care experience in the State when they do not use the same identification number, so we propose that States discontinue this practice.

Further, we believe that States share our desire to understand the entire experience of a child with the State's child welfare system. Numerous commenters on the **Federal Register** notice suggested keeping a child's identification number consistent through his or her child welfare experience. That is why we also have required States to use the same single person identification number for reporting a youth to the National Youth in Transition Database and encouraged States to use the same number for reporting a child to the National Child Abuse and Neglect Data System (NCANDS).

Encryption will ensure that the child's identity will remain confidential. Encryption is one of a number of different methodologies that a State can use to code confidential information. However, we are requiring encryption as opposed to other methods of coding confidential data, like sequential numbering, because it is secure and easier than other methods to cross-reference files for identification at a later date. For example, encryption protects a child's sensitive information by masking the State or local agency's person identification number from Federal staff, researchers or other persons who may come into contact with the data the State submits to ACF. In practice, a State encrypts a record number by introducing a seed or key number into a mathematical formula to code the numbers. The State reveals the original person identification number by re-introducing the same seed or key number to reverse the mathematical formula, a process known as decryption. The State ensures confidentiality by keeping the mathematical formula secure and limiting access to the formula to authorized persons only.

Encryption also is more efficient than some other methods because the State need only safeguard the seed or key number, not a whole list of numbers, which crosswalk between the masked identification number and the real record number. Furthermore, the vast majority of States use encryption methods already in reporting information to AFCARS. The few States that do not use encryption currently have indicated to ACF that they intend to use encryption in the near future. We believe, therefore, that requiring an encryption method will impose a minimal burden on States.

Finally, we have created an exception to the general requirement that a child's

record number remains the same until the age of majority. The exception is for a child who re-enters out-of-home care following an adoption. We are making this exception in recognition of some State policies to change identifiers for children when they are adopted after being in out-of-home care. Regardless of a change in the child's record number, the State must report the child's entire child welfare experience.

Family Record Number. In paragraph (a)(5), we propose for the first time that the State report a unique and encrypted family record number that is associated with the child. Provided the child's family remains the same during the child's out-of-home care and any subsequent out-of-home care episodes, this number must remain the same regardless of where the child or family resides. However, should the child's family change due to adoption we propose that the State submit the adoptive family's record number.

Although we have not requested this information before in AFCARS, we believe that all States use a family number or equivalent in their case management systems to identify the family in which the child in foster care is a member. We propose to collect this information primarily to aid in the identification of sibling groups, which we describe in greater detail in section 1355.43(b)(11).

Section 1355.43(b) Child Information

In paragraph (b) we propose that States collect and report various characteristics of the child in the out-of-home care reporting population.

Child's date of birth. In paragraph (b)(1), we propose to continue to require States to report the child's date of birth (see appendix A to part 1355, section II, II.A). The only change that we made in the proposed definition is to no longer instruct States to report an abandoned child's date of birth as the 15th of the month. During AFCARS assessment reviews, we found that many States were not aware of this instruction or that workers were reluctant to enter an unknown birth date as the 15th of the month. Moreover, we have come to realize that the State child welfare agency is often able to establish or estimate an abandoned child's date of birth quickly by consulting with health officials and/or records. Therefore, we are requiring that the State always provide the child's actual or estimated date of birth.

Child's gender. In paragraph (b)(2), we propose that States report information on the child's gender, consistent with the existing regulation (see appendix A to part 1355, section II, II.B).

Child's race. In paragraph (b)(3) we propose to continue to require information on the race of the child (see appendix A to part 1355, section II, II.C). The racial categories of American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander and White listed in proposed subparagraphs (b)(3)(i) through (b)(3)(v) are consistent with the Office of Management and Budget's (OMB) standards for collecting information on race. (See OMB's Provisional Guidance of the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, at *http://www.whitehouse.gov/omb/inforeg/re_guidance2000update.pdf* for more information.) Each racial category is a separate data element to represent the fact that the OMB standards require States to allow an individual to identify with more than one race. Consistent with the OMB standards, self-reporting or self-identification is the preferred method for collecting data on race and ethnicity. This means that the State is to allow the child, if age appropriate, or the child's parent(s) to determine race.

If the child's race is unknown, the State is to so indicate in subparagraph (b)(3)(vi). A child's race can be categorized as unknown only if a child or his parents do not actually know the child's race. The fact that the State agency has not asked the child or parent for the child's race is not an acceptable use of the unknown response option. Further, it is acceptable for the child to identify that he or she is multi-racial, but does not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. If the child is abandoned, the State must so indicate in subparagraph (b)(3)(vii). We have provided a definition of abandoned so that we are clear that it is to be used in very restrictive circumstances and not any time a parent may be temporarily unavailable. If a child or young person who was abandoned as an infant identifies as being of a certain race or multiple races, the State must indicate the applicable race(s), rather than abandoned. Finally, in the situation in which the child or child's parent declines to identify any race, the State must so indicate in subparagraph (b)(3)(viii).

Child's Hispanic or Latino ethnicity. In paragraph (b)(4), we propose that a State report the Hispanic or Latino ethnicity of the child. Similar to race, these definitions are consistent with the OMB race and ethnicity standards and should be self-reported by the child or his parent. Also, the State may report whether the child's ethnicity is unknown because the parent or child does not know the information, whether the child is abandoned, or that the child or parent has declined to provide this information.

In the elements in paragraph (b)(5) and its subparagraphs, we propose for the first time that the State report the child's use of language. We propose to collect this information because we believe language is an important characteristic of a child that may aid the State in delivering services to him or her. Further, those children who do not speak English or who communicate through sign language may face particular challenges in a State's child welfare system. If we collect this information we will be able to analyze the data to see if language used has an effect on a child's experience in foster care. We believe that having this information will be a greater benefit to ACF and the States than the relatively low burden on caseworkers in collecting the data. We welcome comments on this new element.

Child's language. In paragraph (b)(5), we propose that the State indicate whether the child is verbal, pre-verbal or non-verbal. We are defining verbal to include the use of any language, whether it be a spoken language or other communication, such as sign language. A child who is pre-verbal is one who is too young to use language. A non-verbal child is a child who is of an appropriate age to use language but appears unable or incapable of using language. The child may be non-verbal due to a significant developmental delay or severe deprivation of exposure to language. We believe that we must capture a child's ability to be verbal along with the specific languages the child uses to be able to analyze this characteristic correctly.

Languages used. In subparagraph (b)(5)(i), we require that the State indicate all the languages that a child uses, if appropriate. We have provided several response options that reflect the most common languages used in the United States. However, the State is to indicate any other language(s) the child uses that is not in that list. For a child who uses sign language, the State is to indicate that the child uses sign language in addition to any other language (*e.g.*, English or Spanish) used.

Language preference. In subparagraph (b)(5)(ii), we propose that the State indicate the language with which the child has the greatest facility if the child uses more than one language. For children who are bilingual or multilingual with an equal facility in those languages, the State may indicate all that apply.

We considered requesting information on the child's primary language only, but found this terminology problematic for individuals who may be bilingual or multilingual. We also considered whether we should ask which language the child used in his/her home, but found that construction equally problematic for multilingual families. We believe that allowing the State to identify the languages used by the child and the ones in which the child has the greatest facility is the most straightforward way of gathering the information we desire.

Health, behavioral or mental health conditions. In paragraph (b)(6), we propose to continue to require States to report information on whether a child has been diagnosed with a health, behavioral or mental health condition, with some modifications (see appendix A to part 1355, section II, II.D). Information pertaining to the health characteristics of a child is important in understanding the length of time children remain in care, their placement needs, and, in general, the needs of children being served by the agency. We believe that by collecting this information in AFCARS, we can better support the CFSR in gathering information on children's well-being. Further, requiring this information is consistent with the provision in section 475(1)(C) of the Act for the State to have a case plan that includes the child's health records and known medical problems.

We propose to continue to require that the State indicate diagnoses made by a qualified professional only as determined by the State. A qualified professional may be a doctor, psychiatrist, or, if applicable in the State, a licensed clinical psychologist or social worker. We make this distinction as a means to gather information on medically diagnosed conditions rather than conditions that may be observed by a caseworker to determine the most appropriate placement or referrals for a child. Additionally, this data element will provide ACF with information on whether children in out-of-home care have received a clinical assessment for the diagnosed conditions.

The proposed language also expands upon the types of conditions in the existing regulation. We chose to expand the list of conditions because we learned through AFCARS and SACWIS reviews and providing technical assistance that States had difficulty matching children's actual diagnoses with the existing AFCARS categories. We believe that this has caused data on children's health conditions to be underreported in the past. We developed the new AFCARS categories based on the International Classification of Diseases (ICD) and the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV). We separated some conditions that are grouped together in one category in either the ICD or the DSM IV in order for the information to better meet our needs. We tried to create categories that distinguish conditions that may be more medically/physically based, education-related, or mental/emotional in nature.

Specifically, we propose to continue to collect information on whether a child is visually or hearing impaired but have made the two into separate response options because the needs of these two groups are distinct. We continue to gather information on mental/emotional disorders but have narrowed the definition to those types that are more severe or prolonged in nature. We have broken out the previous category by adding childhood disorders and anxiety disorders. The DSM IV categorizes learning disabilities under ''disorders usually first diagnosed in infancy, childhood, or adolescence.'' We believe, since this condition relates to educational achievement, that it should be separated from the other conditions listed in ''childhood disorders.'' Also, we propose to add categories related to drug and substance abuse separately in order to distinguish these disorders from other behaviors. Finally, we have added the specific category ''developmental disability'' to reflect the definition in section 102(8) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106–402).

We also propose to change the title of these elements from ''disabilities'' to ''health, behavioral or mental health conditions.'' Our intent for collecting this information is to gather data on the problems, disorders, and behaviors of the children in out-of-home care, rather than pinpoint children whose conditions meet a narrow construction of disability. Also, since what is considered a disability can vary for Federal or State programs, insurance purposes, or other benefits, we chose to use a more general term.

Finally, we want to be clear that States must report information known prior to the child's current out-of-home care episode. It is likely that some of the diagnosed conditions will not be corrected or cured in a short period of time. Therefore, if a child re-enters out-of-home care, the State must report the previously known diagnosis if it is still applicable. This principle also applies to a child newly entering out-of-home care who has a known diagnosed condition. For instance, a child may have been born with a congenital defect and is undergoing treatment (or not) for the problem. If the State agency is aware and has obtained a medical summary, then this information should be recorded and reported to AFCARS.

Current immunizations. In paragraph (b)(7), we propose for the first time that a State indicate whether the child's immunizations are current as of the end of the report period. A State agency is to indicate whether the child's immunizations are current, or the State agency may indicate that it has not yet determined the status of the child's immunizations because it has not compiled or obtained the child's immunization records. If a child is too young to be immunized at the time of reporting, *i.e.*, the child is a newborn, the State may indicate that the child's immunizations are current. For the purposes of AFCARS, we are requiring that States determine whether immunizations are up-to-date in accordance with the Recommended Childhood and Adolescent Immunization Schedule (available from the Centers for Disease Control (CDC)) in consultation with the child's practitioner.

We are seeking this information because we are interested in gathering data that will allow us to understand more about a child's well-being while in out-of-home care. Further, this information is readily available to States in most cases since it is a required part of a foster child's case plan (section 475(1)(C)(v) of the Act).

Educational Performance. In paragraph (b)(8), we propose for the first time that a State report information on whether the child has repeated grades in school (in subparagraph (b)(8)(i)) and the number of repeated grades (in subparagraph (b)(8)(ii)). In subparagraph (b)(8)(ii), the State must consider each time a child repeats a grade separately. For example, if a child remained in the tenth grade for three school years, the State must report the number of grades repeated as two.

We have chosen grade level performance as a proposed new data element in an effort to learn more about a child's well-being while in out-of-home care. A recent study of students in Illinois indicated that children in foster care are more likely to be behind in their grade level performance than students who have not experienced a removal from home (Chapin Hall, Educational Experiences of Children in Out-Of-Home Care, 2004). We believe that grade level performance is an appropriate indicator of educational performance because it is used

consistently across the country, is appropriate for all school-age children, and relatively simple for a State agency to collect and report. Further, we believe that this element is consistent with the statutory requirement for States to compile information on the child's grade level performance while in foster care (section 475(1)(C)(ii) of the Act).

Special education. In paragraph (b)(9), we propose to collect information for the first time about whether the child received special education instruction during the report period. The term ''special education,'' as defined in 20 U.S.C. 1401(29), means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. States are to indicate whether the child received special education during the report period, or indicate that the State agency has not yet determined whether the child is receiving special education. We are specifically requesting that States indicate whether the child actually receives special education instruction, rather than whether the child needs or has been referred for special education services. We believe that data on whether the child actually receives special education will be more reliable than information on eligibility for such services and this information will be simpler for States to obtain.

We propose to collect this information because of our interest in monitoring the well-being of children in the out-of-home care reporting population and our desire to provide a more comprehensive picture of the needs of children. We also believe that gathering this information is consistent with the case plan requirements in section 475(1)(C) of the Act.

Prior adoption. In paragraph (b)(10), we propose to continue the requirement for the State agency to report whether the child has experienced a prior finalized adoption (see appendix A to part 1355, section II, II.E). We clarify in the proposed regulation text that we are interested in whether the child has experienced a finalized adoption prior to the current out-of-home care episode as opposed to an adoption that occurs during the current out-of-home care episode. We also are clarifying that the State is to include any type of prior adoption in this element, regardless of whether the adoption was public, private, independent, or an intercountry adoption. Many commenters on the **Federal Register** notice expressed a desire for continuing and expanding the information we collect on prior adoptions to better determine the extent to which children in out-of-home care are involved in dissolved adoptions where the adoptive parents' rights are terminated and displaced adoptions where the child enters out-of-home care after a finalized adoption.

Prior adoption date. In paragraph (b)(10)(i), we propose for the first time that a State report the finalization date of the child's prior adoption. In the case of an intercountry adoption, the child's parents may have gone through a readoption process in the State where they reside. While in many cases this process is optional for a child whose adoption was finalized in the originating country, we understand that there are some States that require the child to be readopted in his/her State of residence. In such cases, we are requiring that the State provide the date that the adoption is considered final in accordance with the State's laws on readoption.

In the existing AFCARS, we ask the State to report the child's age range at the time of the prior finalized adoption (appendix B to part 1355 section II, II.E). This information, however, was insufficient to determine accurately when the child was previously adopted. Thus, we propose that the State report the actual finalization date to allow us to determine how much time has elapsed between the child's previous adoption and his or her current out-of-home care stay.

Prior adoption type. In paragraph (b)(10)(ii), we seek information for the first time on the type of adoption the child experienced previously. In this element, States must distinguish between a prior adoption that occurs out of the reporting State's foster care system, another State's foster care system, an intercountry adoption, or another type of private or independent adoption. Commenters on the **Federal Register** notice believed that an element of this nature would be useful in informing our understanding of dissolved and displaced adoptions.

We define intercountry adoptions as those that occur in another country, or those adoptions that are finalized in the United States after the foreign child has been brought into the country for the purposes of adoption. Another country in this case means any country outside of our definition of a State for title IV–B in 45 CFR 1355.20. We seek this information primarily in response to the requirements of the Intercountry Adoption Act (IAA) of 2000 (Pub. L. 106–279). The IAA added section 422(b)(14) to the Social Security Act and requires that a State collect and report certain information on children who are adopted from other countries and who enter State custody as a result of the disruption of a placement for adoption or the dissolution of that adoption. This information will allow us to compile the number of children and permanency plans for children involved in dissolved adoptions and from where such children originated.

Prior adoption location. In subparagraph (b)(10)(iii), we propose that a State submit the FIPS code which corresponds with the State or country in which the child was previously adopted, if applicable. This also is a new element. We propose to collect this information so that we can calculate accurately the dissolution and displacement rates for both the State in which the child was adopted and the State in which the displacement or dissolution occurred. Further, collecting information on the actual country of the prior adoption will inform our understanding of intercountry adoptions that require the intervention by State public child welfare agencies consistent with the IAA.

Number of siblings living with the child at removal. In paragraph (b)(11), we propose for the first time that the State report the total number of siblings living with the child at the time of the child's removal from home, if any. These siblings may be biological, legal or by marriage but cannot be adults according to the State's age of majority. The State is not to include the child who is the subject of the report (i.e., the child whose record number is reported for the element in paragraph (b)(4)) in this count.

We wish to be clear that States must report only the number of the child's siblings who were living with the child at removal and not the total number of siblings of the child. This includes all siblings living with the child at removal, whether the sibling relationship is biological, legal or by marriage. We are making this distinction because it is more useful for us to know the number of sisters and brothers who lived with the child rather than the sum total of all siblings regardless of where they lived. Since we are interested in understanding the dynamics of sibling groups for permanency planning purposes, we do not believe it is necessary for the State also to report information on a child's brothers or sisters who are not present in the home and for whom the parent/legal guardian may not be responsible.

The reason that we require States to report this information is because we want to get an accurate count of the number of siblings in out-of-home care who were actually living together at one time prior to the entry of the child into out-of-home care. We need this element specifically so that we can understand

when the number of siblings in out-of-home care is different from the number of siblings who were living together at removal. For example, it is possible that the mother could give birth to an infant who is removed from home after the reported child enters out-of-home care, thereby increasing the count of the number of children in out-of-home care, but not the number of siblings in the AFCARS population when the child was removed. This has implications for the child's permanency plan and State agency expectations for placing siblings together.

We propose this element, along with the family identification number (discussed previously) and the number of siblings placed together (described later), in order to get information on sibling groups for a variety of reasons. Good practice dictates that, where possible and in the best interests of the child, siblings in out-of-home placements should be placed together. However, we also know that addressing the needs of sibling groups provides agencies with special challenges. The data that we propose to collect, among other things, will provide us with extremely useful information about siblings. For example, this data will allow us to analyze how being a part of a sibling group involved with the child welfare agency affects the timeliness and success of reunification. Furthermore, it is especially important to know about sibling groups for adoption purposes, since we know that many children placed into out-of-home care are later placed for adoption. In addition, most States use ''sibling'' groups as one of the special needs categories for providing adoption subsidies. We understand that this is one of the most difficult groups of children for whom States must find adoptive homes.

Many **Federal Register** commenters agree that we need to modify AFCARS to obtain information on siblings. Commenters believe that such data will allow States to track sibling groups that are placed together or apart; analyze how well agencies preserve sibling attachments, as well as determine and implement services that specifically address the needs of sibling groups. Typically, States have this information in case files, but it is not yet an established practice for all States to track this information in their case management systems. We found through the CFSRs that a State can lose track of a child's siblings. We believe that requiring States to report sibling groups through AFCARS will decrease the frequency of this happening.

Finally, requiring sibling information in AFCARS will be useful for the CFSRs. In the CFSR, we rate States on several items that relate to this issue, such as preserving family connections, visiting between children in foster care and their families, and relative placements. As States enter program improvement plans (PIPs) to improve these areas, it will be helpful to have this data in AFCARS to be able to identify where the problems are and track progress over time. We also rate the safety and well being items on all children in the family, regardless of whether the case is a foster care case.

Minor parent. In paragraph (b)(12), we propose that the State collect and report the number of children either fathered or borne by the young person in the State's AFCARS report. If the young person has no children, the State must indicate zero. States are to report the total of all children of the young parent, irrespective of whether or not such children live with their parent.

Commenters requested an element of this nature and we feel it is important for us to have improved data about the characteristics of young people in out-of-home care. This information can allow us to analyze the extent to which having children affects a youth's permanency plan. This data element also will be used in conjunction with a subsequent data element in 45 CFR 1355.43(e)(9) about the population of young people in out-of-home care who have children for whom they are responsible and are living with them. The combination of information in the two elements will allow us to determine the number of young people in out-of-home care who have children, and the extent to which those young people are responsible for the care of their children.

Child financial and medical assistance. In paragraph (b)(13), we propose that a State report for the first time the type of financial and medical assistance that the child received during the current six-month report period. The State is to indicate whether the child receives benefits under title XVI of the Act (including SSI), the State's Medicaid program including under title XIX waivers or demonstrations, the State's Children's Health Insurance Program (SCHIP) including under title XXI waivers or demonstrations, a State adoption subsidy, a State foster care payment, child support, other financial assistance or no financial assistance.

While there are elements in the existing AFCARS that require States to report the sources of Federal support for the child, this element is different in that it focuses on a variety of financial and medical assistance rather than just Federal support. The statute at section 479(c)(3)(D) of the Act requires that we collect national information on ''the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs.'' As such, we believe that expanding the scope of our financial and medical assistance elements to gather more information on assistance for the child is required by law. This proposed element, in conjunction with the following element on receipt of title IV–E foster care maintenance payments and elements in the living arrangement section of this NPRM (1355.43(e)), will allow us to gather more information on the kinds of financial and medical assistance that support children in out-of-home care.

Title IV–E foster care during report period. In paragraph (b)(14), we propose a new element for the State to report specifically whether the child received a title IV–E foster care maintenance payment during the current report period. The State is to respond affirmatively that the child has received a title IV–E foster care maintenance payment only if one was paid on the child's behalf during the current six-month report period, or the child is eligible for the program in accordance with section 472(a) of the Act and the State will claim Federal reimbursement under title IV–E for the child's foster care maintenance payment.

This element is used primarily to extract the title IV–E foster care eligibility review samples. Currently, the title IV–E foster care eligibility review sample is drawn from an existing AFCARS element that requires States to identify foster care maintenance payments as one of many Federal sources of support for the child. We have learned through technical assistance and AFCARS assessment reviews, however, that States often report this element incorrectly. A common mistake with the existing element involves the State indicating that the child is receiving title IV–E foster care maintenance payments when the child has met some title IV–E eligibility requirements (e.g., AFDC eligibility) but not all. We wish to isolate this element so that we can clearly define it and improve the sample selection process for the title IV–E foster care eligibility reviews.

Section 1355.43(c) Parent or Legal Guardian Information

In paragraph (c), we are seeking demographic information on the child's parent(s) or legal guardian(s).

Year of birth of parent(s) or legal guardian(s). In paragraphs (c)(1) and

(c)(2), we propose that the State collect and report to AFCARS the birth year of the child's parents or legal guardians. This information is sought on the child's parent or legal guardians regardless of with whom the child is living at the time of removal from home. If the State cannot obtain this information because the child is abandoned, the State must so indicate. This information differs from the existing AFCARS in that we currently request the year of birth of the child's caretakers from whom he or she was removed (see appendix A to part 1355, section II, VII.B). The information collected under the existing regulation does not clearly indicate whether the child's caretaker was the parent, legal guardian, or some other person who was temporarily taking care of the child at the time that the child was removed from home. Because of this lack of clarity, our ability to analyze the existing data is limited.

We believe that focusing the proposed elements on the child's parents or legal guardians is more consistent with the statutory mandate to collect demographic information on the biological and adoptive parents of children in foster care (section 479(c)(3)(A) of the Act). By expanding our requirement to gather the year of birth of all legal parents (*i.e.,* inclusive of biological parents, adoptive parents and stepparents) or the child's legal guardian, we believe we are better meeting the intent of the statute to understand the characteristics of persons who are legally responsible for children who must enter foster care.

Mother married at time of the child's birth. In paragraph (c)(3), we propose that a State report to us whether the child's biological mother was a married person at the time the child was born. This element is similar to one that States collect currently, except that in the existing element we require that a State provide this information only for children who are adopted (see appendix B to part 1355, section II, IV.B). We believe that this information is better suited for the out-of-home care reporting population as a whole. According to comments, some stakeholders believed this information was unnecessary while others believed it should be expanded to be reported for the entire out-of-home care reporting population. We chose to expand the reporting of this element for a few reasons. First, we understand from AFCARS assessment reviews that many States already collect this information when a child enters out-of-home care rather than at the point of adoption, so broadening the scope of this requirement should not increase the burden on States. Second, from our analysis of the existing data on whether the child's mother was married at the time of the child's birth, we have found that the marriage rates in our population are lower than the national average. According to the National Center for Health Statistics, 34% of births are to unmarried women compared to over half of the births of children adopted from public foster care systems. One of the priorities of this administration is to promote healthy marriages, in part, because researchers have found many benefits for children and youth who are raised by parents in healthy marriages. In that context, we are interested in gathering data that may help us assess if a mother's marital status at the time of the child's birth is a factor in a child's child welfare experience. This collection also is consistent with the statutory mandate to collect demographic information under section 479(c)(3)(A) of the Act.

Termination of parental rights petition. In paragraphs (c)(4) and (c)(6), we seek new information on the date that a petition to terminate parental rights (TPR) was filed against the child's parents. This information will provide us with data we can use to evaluate how States are complying with the requirement in section 475(5)(E) of the Act to file a petition to terminate the parental rights of certain children in foster care. Further, this information, in conjunction with information collected on final dates of TPR and adoption, will help us determine how long it takes for permanency to be achieved for children who are adopted.

Termination of parental rights. In proposed paragraphs (c)(5) and (c)(7), we continue the existing requirement for States to collect and report data on the date that parental rights are terminated for each parent (see appendix A to part 1355, section II, VIII).

For all data elements related to the termination of parental rights, we propose to clarify that we are seeking information on a child's putative father, if applicable. A putative father is a person who is alleged to be the father of a child, or who claims to be the father of a child, at a time when there may not be enough evidence or information available to determine if that is correct. For the current AFCARS we have fielded questions on whether States should provide information on putative fathers. Since States must terminate the parental rights of any putative fathers to ensure that a child legally is free adoption, we want to be clear that we are interested in this information as well.

Finally, we would like to note that we propose to eliminate the existing element on the family structure of the child's caretakers from whom the child was removed (see appendix A to part 1355, section II, VII.A). We concur with several commenters to the **Federal Register** notice that this information is not useful as currently constructed. However, we have proposed alternative elements in paragraph (d) that we believe will give us better insight into the composition of the child's household at the time of removal.

Section 1355.43(d) Removal Information

In paragraph (d) we propose that the State submit information related to the child's removal from home and the assumption of responsibility by the State agency for placement and care of the child. We request that for any child in the reporting population, the State submit removal information regarding every occasion that the child is removed from home until the child has reached the age of majority. This is a significant change from the existing AFCARS, where we require detailed removal information on the child's most recent removal only.

The major reason for making this change is that we will be able to analyze more accurately the frequency and circumstances surrounding a child's entry into out-of home care. As pointed out earlier, many States and other stakeholders have indicated that longitudinal data that permits the examination of entry, exit, permanency plan and living arrangement information is critical to the CFSR process and other efforts to measure outcomes.

Date of child's removal. In paragraph (d)(1), we propose that the State collect and report the date or dates on which the child was removed from his or her parents or legal guardians and placed under the placement and care responsibility of the State title IV–B/IV–E agency. This proposed element differs from the existing AFCARS, which asks for the dates of the child's first removal and latest removal from home for the purpose of placement in a foster care setting (see appendix A to part 1355, section II, III.A). The proposed element requires the State to report all removal dates in one element and clarifies which dates the State must report in certain circumstances.

In many cases the date of the child's removal will be when the child is removed physically from his home and placed directly into out-of-home care. However, for a child who was already away from his parents at the time the

State child welfare agency receives placement and care responsibility (i.e., in the case of a runaway, constructive removal, or transfer of placement and care responsibility from a separate public agency), the State agency must report the date when it receives placement and care responsibility rather than the date of physical removal. Further, if the child was in out-of-home care previously and returned home with continued State agency placement and care responsibility (which must be reported as an exit in accordance with our proposed reporting population), the date of the child's removal is the date of the new removal from the child's home.

A major reason why we are proposing that States report all removal dates is so that we can accurately analyze a child's repeat foster care re-entry rate for CFSR purposes, particularly any associated length of time to re-entry. Currently, we are able to measure a child's re-entry rate using AFCARS information, but this information has limitations. For example, the current AFCARS does not allow us to analyze the child's entire detailed history of removals. Furthermore, by requiring that the State title IV–B/IV–E agency provide us with all of the dates in a child's entire removal history, rather than only the first and current removal dates, we can identify trends that might assist States in better understanding their data and making program improvements as needed. Without the entire history, we are unable to determine, for example, the effects of States' program improvement planning efforts on repeat entries into foster care, the duration of all episodes of foster care, and the outcomes of a child's stay in foster care.

We do not believe that the changes to the removal date will be an additional burden on States because we understand that most, if not all States, have this information in their existing information systems. In fact, this proposal may ease State burden such that the State can simply transmit all of its removal date information, rather than separating out which dates to report for AFCARS purposes only. We welcome comments on this proposal.

Removal transaction date. In paragraph (d)(2), we propose that the State title IV–B/IV–E agency continue to report the date that the State agency entered the child's removal date into the State's information system (see appendix A to part 1355, section II, III.A). This transaction date must accompany every removal date. This must be a computer-generated, non-modifiable date. To be timely, the date must be entered within 15 days of the child's removal from his/her parent and placement under the agency's responsibility.

Although this is a significant change in the time frame for the State to enter the date of a child's removal, we have found that States report more accurate, high quality data when the transaction date is entered into the information system close in time to the event that it describes. This is our ultimate goal with this proposed change; to have accurate dates of removal for all children reported. A child's removal date is one of the most critical data elements in the AFCARS, as it is the anchor date for calculating certain CFSR outcome measures and is necessary for other purposes as well.

Some commenters to the **Federal Register** notice suggested that entering the transaction date should be secondary to ensuring child safety. We agree that child safety is paramount, and understand the competing demands placed on child welfare workers. However, we have not changed our position that States must enter the child's removal date into the State's information system in a timely manner. Further, information from our analysis of AFCARS data submitted for the FY 2003 and FY 2004 report periods indicate that three-fourths of the cases are entered within 15 days of the child's removal. Therefore, we do not believe that this proposed change will be a significant departure from State practice in most instances. We welcome comments on this proposed change.

Environment at removal. In paragraph (d)(3), we propose that the State agency report if the child was living in a household or in another environment at the time of each removal. This is a new element. We propose that States report whether the child was living in a household or another environment (e.g., the child has run away) so that, in conjunction with the two subsequent elements on household composition and biological parents' marital status, we can learn more about the child's home or situation prior to entering out-of-home care. The existing AFCARS requires a State to report the family structure of the child's caretakers at removal. We have found this information to be insufficient for our analytical needs as it does not provide information about with whom the child was living, if anyone, or identify family relationships specifically. We believe that more detail about the child's environment at removal will inform our analysis of how children come into out-of-home care and their child outcomes.

Household composition at removal. In paragraph (d)(4) and its subparagraphs (d)(4)(i) through (xi), we propose for the first time that the State report all adults in the child's household with whom the child was living at the time of each removal. We propose that States identify the composition of the child's household if the child was actually removed from a home environment as identified in the previous element. States may identify parents, grandparents, other relatives, a paramour of a parent or caretaker, other non-relatives, adult siblings, or other non-related caretakers, by indicating how many of each category of persons was in the home. For example, if the child was living with the biological mother and stepfather at removal, the State would indicate that there was one biological parent, one stepparent, and indicate a zero for all other persons.

We propose to require that States report this information because we want to gather as much information as is practical about a child's life at the time of removal to conduct various analyses relating to under what circumstances and with whom children are living before they enter out-of-home care. We are aware that some children who are legally removed from their parents do not live with them at the point of removal, or are also cared for by another adult. Some may be living informally with relatives or neighbors. In short, having this information will enrich what we know about children who enter out-of-home care.

We have been careful to clarify in our description of a non-related caretaker that States report information on only those persons who have assumed responsibility for the day-to-day care of the child. This is because we are interested in collecting information on those persons who have an ongoing caretaking role for the child as opposed to those who may have temporary physical possession of the child. We believe it serves little analytic purpose to gather information on persons who are not part of the child's household prior to the child's entry into out-of-home care. For example, there may be a situation where a parent leaves the child with a babysitter or neighbor for the day but has not returned a couple of days later, at which point the babysitter or neighbor contacts the child welfare agency. In such a situation, the babysitter or neighbor has not assumed responsibility for that child and the State must report information on the persons in the child's household instead. We welcome comments on this element.

Biological parents' marital status. In paragraph (d)(5), we propose that the State report the marital relationship

between the child's biological parents if the child was removed from at least one biological parent. We propose that the State report whether the biological parents are married to each other and whether they are living together at the time of the child's removal. We also have a category for a deceased biological parent that should be used regardless of the parents' marital status at the time of the parent's death. We are proposing this element because, as noted earlier, we are interested in the role that marriage plays in positive child outcomes, particularly as it relates to the child's biological parents.

Manner of removal. In paragraph (d)(6), we propose that the State title IV–B/IV–E agency continue to collect and report on the State's authority to remove the child from home for each removal (see appendix A to part 1355, section II, IV.A). We have made no changes to the information that is reported, except that it must be reported for every removal the child experiences. Specifically, the State title IV–B/IV–E agency is to indicate whether the State's authority for removing the child from home for each removal was based on a court order or a voluntary placement agreement. If this is not yet determined, the State must so indicate and update the record to reflect the manner of removal once it is known. We continue to envision that the ''not yet determined'' category will happen in short-term cases only since establishing the appropriate legal authority to remove a child from home is an initial and critical State agency responsibility.

We considered making changes to this section in an attempt to distinguish court orders that are for the placement of children into the agency's responsibility for dependency reasons and those that are for juvenile justice agency involvement reasons. Because State practice with regard to this issue is so varied, we do not think that there is a single way to categorize court orders. Therefore, we propose changes to the elements related to child and family circumstances at removal and juvenile justice involvement to gather information on children with juvenile justice agency involvement.

Child and family circumstances at removal. In paragraph (d)(7), we propose to collect data about the circumstances surrounding the child and family at the time of the child's removal from home. While currently we collect information on the circumstances associated with a child's most recent removal (see appendix A to part 1355, section II, IV.B for all response options), we propose in this element to require this information for every removal and expand the list of circumstances, among other things, to include juvenile justice information.

We do not characterize these circumstances as the reasons for or causes of removal, although certainly some of these factors may have been the sole basis for the removal. Consistent with the existing AFCARS, we propose that the State agency only include information in this element that it has gathered about the child, the child's family and circumstances at the time the agency removes the child from home. As the State investigates and works with a family, the agency may learn of other factors or underlying issues that could have contributed to or necessitated removal. But we are not seeking that information here. Rather, we propose additional elements to capture circumstances that may arise during the course of the child's stay in out-of-home care as discussed later in the permanency and exit sections of the NPRM. In this element, we wish to understand, in a comprehensive manner, what is occurring in a child's life at the time of removal. Therefore, we propose to retain the current feature of AFCARS to require that the State indicate all of the circumstances associated with a child's removal. We have had concerns with the practice in some State agencies of reporting only the primary reason associated with the child's removal, leaving out important information about other relevant circumstances. We want to emphasize here that the State must report all of the circumstances at the time of the child's removal. Below, we explain all the response options for this element.

Juvenile Justice. We propose two new response options for circumstances at removal that are juvenile justice related. Currently, in AFCARS, the circumstances associated with the child's removal do not include the child's involvement, if any, with the juvenile justice system. Consequently, we have not been able to identify which children begin their out-of-home care experience with alleged or adjudicated delinquent or status offenses. As indicated earlier, we have heard through a variety of sources, including comments on the **Federal Register** notice and the CFSRs, that it is important to clarify the characteristics of the reporting population so that we will be able to analyze the differences in various CFSR and other outcome measures.

Specifically, we propose that a State report whether the child is alleged or found to be a status offender at removal. We propose to define status offenses as those that are specific to juveniles, including but not limited to, running away from home, underage alcohol violations and truancy. We propose that the State title IV–B/IV–E agency report a child status offender even if the status offense is alleged. We also request that the State report whether, at the time the child was removed from home, the child is an alleged or adjudicated delinquent. States are to indicate this circumstance irrespective of whether the child has had a hearing or a trial or has been found guilty for the delinquent act of which he or she was accused. We are more interested in knowing whether the young person has been involved in a juvenile justice type of activity rather than whether the young person was found guilty. Primarily, our goal is to obtain additional information about the reporting population when there is involvement with the juvenile justice system, even if the offense is not later adjudicated.

Runaway. We propose that the State title IV–B/IV–E agency collect and report whether, at the time the State title IV–B/IV–E agency assumed placement and care responsibility for the child, the child had run away from home. Currently in AFCARS, we collect this information through the ''child behavior problem'' element. We propose now that States report separately on children who have run away at the time that the agency takes responsibility for the child. With increased interest and focus on missing children, we agree with the **Federal Register** respondents who believe that running away from home is a specific child behavior that needs to be tracked separately from general child behavior problems.

Physical abuse. We propose that States continue to collect and report whether physical abuse was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of physical abuse that currently appears in AFCARS. The definition of physical abuse is: ''alleged or substantiated physical abuse, injury or maltreatment of a child by a person responsible for the child's welfare.'' We believe that this definition adequately captures both substantiated and alleged child physical maltreatment. We considered using the National Child Abuse and Neglect Data Systems (NCANDS) definition of physical abuse, which is: a ''type of maltreatment that refers to physical acts that caused or could have caused physical injury to the child.'' However, the NCANDS definition does not capture the concept of alleged physical abuse. Specifically, the NCANDS

definition of physical abuse contemplates that the physical abuse of the child has been substantiated, rather than merely alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that physical abuse already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at an early stage.

Sexual abuse. We propose that the State title IV–B/IV–E agency continue to collect and report whether sexual abuse was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of sexual abuse that currently appears in AFCARS. The definition of sexual abuse is: ''alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.'' We believe that this definition adequately captures both substantiated and alleged child sexual abuse and exploitation. We considered using the NCANDS definition for sexual abuse, which is: ''a type of maltreatment that refers to the involvement of the child in sexual activity to provide sexual gratification or financial benefit to the perpetrator, including contacts for sexual purposes, molestation, statutory rape, prostitution, pornography, exposure, incest, or other sexually exploitative activities.'' However, the NCANDS definition does not capture the concept of alleged sexual abuse. Specifically, the NCANDS definition of sexual abuse contemplates that the sexual abuse of the child has been substantiated rather than alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that sexual abuse already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at this early stage.

Psychological or emotional abuse. We propose that the State collect and report whether alleged or substantiated psychological or emotional abuse by a person who is responsible for the child's welfare was a circumstance of removal from the home. This includes verbal abuse directed against the child by the person who is responsible for the child's welfare. This is a proposed new response option. In AFCARS currently, we do not require the State to report specifically on emotional or psychological abuse as a circumstance associated with removal. In § 1.2B3 of the Child Welfare Policy Manual (Question and Answer #3), however, we instruct that circumstances of ''mental abuse'' should be considered as neglect for AFCARS purposes. By adding a response option for psychological or emotional abuse, we propose to distinguish neglect from psychological and emotional abuse, which we believe is a useful distinction to make.

Neglect. We propose that the State continue to collect and report whether neglect was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of neglect that currently appears in AFCARS, as we believe it adequately captures both substantiated and alleged child neglect. We considered using the National Child Abuse and Neglect Data Systems (NCANDS) definition of neglect, which also includes deprivation of necessities. That definition is: ''a type of maltreatment that refers to the failure by the caretaker to provide needed, age-appropriate care although financially able to do so, or offered financial or other means to do so.'' However, the NCANDS definition does not capture the concept of alleged abuse. Specifically, the NCANDS definition of neglect contemplates that the neglect of the child has been substantiated, rather than alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that neglect already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at this early stage.

Medical neglect. We propose a new response option that will allow the State to report whether medical neglect was a circumstance of removal from the home. We propose that medical neglect is defined as an alleged or substantiated type of maltreatment that is caused by a failure of a child's caretaker to provide for the appropriate health care of the child, even though the caretaker is financially able to do so, or is offered assistance to financially do so. We have modeled the definition on the NCANDS definition. However, we propose to include the concept of 'alleged' medical neglect to the definition because, as we have explained, an allegation of medical neglect is not always substantiated at the time of removal.

Domestic violence. We also propose a new response option for the State to report whether domestic violence was a circumstance associated with the child's removal from the home. We propose to define domestic violence as ''alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner.'' In proposing this definition, we do not want to limit the definition, for example, to violence between the parents of the child who is removed from the home. Instead, we construe this term broadly to mean any person who is or was a partner to an adult living in the home. We believe that this broad definition accurately reflects the reality of many domestic violence circumstances. As with other elements, we considered adopting the NCANDS definition, but decided that the definition was too limiting for our purposes because it defines domestic violence as occurring between spouses or parent figures. Additionally, the NCANDS definition does not address allegations of domestic violence. As we have explained, at the time of removal, workers are likely to have allegations of conduct to report to AFCARS, and not always substantiations.

Abandonment. We propose that the State continue to report abandonment as a circumstance of removal, but we propose a change in the definition of an abandoned child for AFCARS reporting. We propose now to define abandonment to mean that the child is left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. The current AFCARS regulations define abandonment as ''child left alone or with others, caretaker did not return or make whereabouts known.'' The major difference with the proposed definition is that abandonment only includes the circumstance where the parent's identity is unknown. That is not always the case under the current AFCARS, since the definition of abandonment is broader and encompasses both the situations in which the State knows the parent's identity, and when it does not. The circumstance where the child is left alone and the parent's identity is known, but the agency does not know where the parent is, will now be reported in the new response option ''failure to return.''

We propose this change so that we can identify the truly abandoned child whose parents are unknown from a child who is left with others, but the State knows the identity of the parent. We are often asked by members of Congress and others to identify cases of abandoned children (most often infants) in which the parents have left the child alone, with someone, or somewhere, but have not made their identity known. Further, information requests regarding this population of children have

increased with the proliferation of ''safe haven laws.'' Currently, we are unable to distinguish this specific population of children in AFCARS, because as we have explained, the current definition of abandonment is broad. Furthermore, the permanency planning needs of these children are different from those of a child whose parents are known. For instance, both under the Child Abuse Protection and Treatment Act (CAPTA) program and the title IV–E program, States are required to expedite permanency for an abandoned child since there is not an identified parent with whom the agency can work toward reunification.

Failure to provide supervision. We propose a new response option for the State to report whether a parent or legal guardian's failure to supervise a child is a circumstance of the child's removal. This includes when the parent or legal guardian fails to provide adequate care and/or age appropriate supervision for the child on a recurring or long-term basis. Currently in AFCARS, we advise States to report a parent's failure to supervise as ''neglect'' through instruction in section 1.2B.3 of the Child Welfare Policy Manual (Question and Answer #5). We believe, however, that a failure to supervise is distinct enough from general child neglect to warrant a separate element.

Failure to return. We also propose a new response option for the State to report the circumstance of a caretaker who leaves the child alone or with others and does not return for the child or make his/her location known to the child welfare agency. Currently, States report this circumstance under the category of ''abandonment.'' As we explained earlier, we propose that States report this type of circumstance in a separate data element from ''abandonment'' so that we can identify a truly abandoned child from one where the whereabouts of the parent are not known. As we noted earlier, we often are asked by members of Congress and others to identify abandoned infants, but under the current AFCARS we are unable to make these distinctions. Therefore, we are not proposing that the State provide new information, but that the State report the information to us differently.

Caretaker's alcohol abuse. We propose that the State continue to collect and report whether the child's parent, legal guardian or other responsible caretaker's compulsive use of alcohol was a circumstance of the child's removal from the home. However, we propose to change the definition slightly because we believe that such changes will more readily and accurately reflect our intent. Currently in AFCARS, the State title IV–B/IV–E agency collects and reports information about a caretaker's compulsive use of alcohol that ''is not of a temporary nature.'' We do not want to limit this circumstance to long-term abuse of alcohol only, as we believe that even short-term abuse has deleterious effects on the child.

Although some stakeholders advised us to apply the NCANDS definition of alcohol abuse to AFCARS, we have decided not to adopt the NCANDS definition. NCANDS defines alcohol abuse as ''compulsive use of alcohol that is not of a temporary nature. Applies to infants addicted at birth, or who are victims of Fetal Alcohol Syndrome, or who may suffer other disabilities due to the use of alcohol during pregnancy.'' The NCANDS definition does not include the concept of alleged alcohol abuse. At the time of removal, it is likely that the State will be able to report unsubstantiated or alleged conduct only. We therefore believe it is important to include the notion of alleged alcohol abuse for AFCARS purposes. The NCANDS definition also expressly excludes the concept of temporary alcohol abuse, which as explained above, we believe is relevant to an assessment of the child's circumstances at removal. Finally, the NCANDS definitions include infants who are born addicted at birth. As we have explained below, for AFCARS purposes, we want to be able to identify clearly when an infant is addicted to alcohol at birth as opposed to an adult caretaker who compulsively uses alcohol.

Caretaker's drug abuse. We propose that the State continue to collect and report whether the child's parent, legal guardian or other caretaker's compulsive use of drugs is a circumstance of the family at the time of removal. We have suggested the very same modifications to this data element as the response option related to caretaker's abuse of alcohol for the same reasons.

Child alcohol use. We propose that the State continue to report whether the child's alcohol use was a circumstance of the child's removal from home. This proposed response option differs from the existing one, however, by no longer capturing situations in which the child is born addicted to alcohol at birth. We believe that an infant who is exposed to alcohol in utero is different from a child who compulsively uses alcohol of his or her own accord.

Child drug use. We propose that the State continue to report whether the child's drug use was a circumstance at the time of the child's removal from home. This proposed element differs from the current element, however, by no longer capturing situations in which the child is born addicted to drugs at birth. As stated above, we believe that an infant who is exposed to drugs in utero is different from a child who compulsively uses drugs of his or her own accord.

Prenatal alcohol exposure. We propose that the State collect and report whether a child has been prenatally exposed to alcohol that has resulted in fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome. Currently in AFCARS, we do not require the State provide information separately on this circumstance. Instead, States report ''infants addicted at birth'' as part of a child's own alcohol abuse. This new response option will allow us to distinguish a child whose removal circumstances involve prenatal alcohol exposure from a child who has his or her own alcohol use issues.

Prenatal drug exposure. We propose that the State collect and report whether a child has been exposed to drugs prenatally. Currently in AFCARS, we do not require the State to provide information separately on this circumstance; instead States report ''infants addicted at birth'' as a part of a child's own drug abuse. This new response option will allow us to distinguish a child whose removal circumstances involve prenatal drug exposure from a child who has his or her own drug use issues.

Diagnosed condition. We propose that the State continue to report whether the presence of a child's diagnosed health, behavioral or mental health condition was a circumstance associated with the child's removal from the home. States currently report similar information as ''child disability'' but we propose here to modify this definition to align with the diagnosed condition element in paragraph (b)(6). We continue to believe the collection of this information is necessary to understanding the status of children when they are removed from their homes. We know that some children are placed out of their homes not because they have been abused or neglected, but because they have a condition, circumstance or disability that causes their parent or caretaker to be unable to care for them. Furthermore, a child's diagnosed condition or disability significantly impacts a child's permanency and other factors. Thus, it is essential that we know whether the child's diagnosed condition or disability is related to the removal from home.

Inadequate access to mental health services. We propose a new response

option that the State collect and report whether a circumstance of a child's removal was in order to access mental health services. We agree with the **Federal Register** commenters who suggested that we should know when a child needing mental health services is placed in out-of-home care so that the State can ensure that the child can access mental health services. Many stakeholders increasingly have become interested in this topic, including States and the Congress. Some States have enacted or proposed laws to ensure that parents can relinquish placement and care responsibility for their children to the State for the purpose of mental health treatment without losing custody of the child. This response option will help us to determine the breadth of such circumstances in particular States and nationwide.

Inadequate access to medical services. We propose a new response option that the State title IV–B/IV–E agency collect and report whether a circumstance of the child's removal from the home was in order to access medical services. We understand that sometimes children have specific medical conditions that are separate from a child's mental health needs. Therefore, we are adding this circumstance of removal so that States can indicate all of the possible situations that exist when a child is removed from home. Inadequate access to medical services may include situations where the child's caretakers seek the child's removal to access a medical service that they cannot provide. It does not include instances of withholding medical services or medical neglect. We are not sure how often this is a circumstance related to a child's placement outside of the home, but want to provide a complete list of possible circumstances.

Child behavior problem. We propose that the State continue to collect and report information about whether a child's behavior problem(s) was a circumstance associated with the child's removal from the home. We propose to maintain most of the definition that currently appears in AFCARS, but propose to alter it slightly for clarity and accuracy. Currently in AFCARS, we include adjudicated conduct and a child who has run away from home or another placement in the definition of ''child behavior problem.'' We specifically propose to exclude status offenses, juvenile delinquent conduct and running away from the category of ''child behavior problem.'' We propose that both runaway and juvenile justice children be reported separately so that we can identify clearly a behavioral problem that has already come to the attention of the juvenile justice agency. Thus, we are redesigning this response option to capture situations when a parent is unable to manage the child's behavior, but there has been no involvement by the juvenile justice system.

Death of caretaker. We propose that the State continue to collect and report information on whether the death of a child's parent, legal guardian or caretaker was a circumstance of the child's removal from home. We are modifying this response option to capture whether the death of a child's legal guardian was a circumstance of removal.

Incarceration of caretaker. We propose that the State continue to collect and report information on whether the parent, legal guardian or caretaker's incarceration was a circumstance of the child's removal from home. We have modified this response option to read ''a child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his/her ability to care for the child.'' This new definition will broaden the current AFCARS definition to include when the parent, legal guardian or caretaker's incarceration is not only in jail but in prison as well. We understand that jails are typically local facilities that are used to incarcerate a person for less than a year, whereas prisons are State or Federal facilities that can confine a person for a longer period. We have also modified this response option to capture information on the incarceration of a legal guardian. Previously the response option referred to the parent or caretaker only.

Caretaker's inability to cope. We propose that the State collect and report information on whether a parent, legal guardian or caretaker's inability to cope due to a physical or emotional illness or disabling condition adversely affecting the parent's ability to care for the child is a condition related to the child's removal from the home. This response option is the same as the existing one.

Caretaker's limited mental capacity. We propose that the State collect and report separately as a circumstance of removal whether a child's parent, legal guardian or caretaker's limited mental capacity is adversely affecting the person's ability to care for the child. This is a new response option. We propose that limited mental capacity means that the parent, legal guardian or caretaker has limitations in his/her ability to function in areas of daily life, such as communication or self-care. It also may be characterized by a significantly below-average score on a test of mental ability. Previously, States reported a caretaker's limited mental capacity in the response option for a caretaker's inability to cope. However, since low cognitive functioning is distinct from low emotional functioning, we wish to capture those circumstances in a separate response option so we can understand them more clearly. Moreover, many States include limited mental capacity separately in their SACWIS. Therefore, this may not be a significant change for many States.

Inadequate housing. We propose that the State continue to collect and report whether inadequate housing was a circumstance of the child's removal from the home. We continue to define inadequate housing as housing facilities that are ''substandard, overcrowded, unsafe or otherwise inadequate, resulting in their not being appropriate for the parents and child to reside together.'' Homelessness is also included in the definition of this response option. We see no reason to make changes here as this definition is adequate for our information purposes and stakeholders did not raise concerns.

Disrupted intercountry adoption. We propose to include a disrupted intercountry adoption as a new child and family circumstance of removal. We are referring to the specific situation where a child has been brought into the United States for the purpose of adoption and placed in a preadoptive home but that placement has been disrupted and the child enters out-of-home care before the child's adoption is finalized. We are including this response option to address the requirement in section 422(b)(14) of the Act, for States to report information on children who enter State custody as a result of the disruption of a placement of an intercountry adoption.

Voluntary relinquishment. We propose that the State report whether a voluntary relinquishment was a circumstance of the child's removal from home as under current AFCARS requirements. We have retained the definition of relinquishment as ''the biological/legal parent(s) in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.'' In this circumstance, a parent has voluntarily surrendered his or her parental rights to the title IV–B/IV–E agency and the State agency may place the child for adoption. We see no reason to change the definition.

Section 1355.43(e) Living Arrangement and Provider Information

In paragraph (e), we propose that the State collect and report information on

each of the child's living arrangements every time the child is in out-of-home care, as well as information about the providers who are caring for the child. We have modified our living arrangement types from the current AFCARS requirements (see appendix A to part 1355, section II, V.A) to accommodate the changes to the reporting population. Specifically, we are proposing that States report information on children who are in out-of-home care for AFCARS purposes, regardless of the type of setting. Furthermore, we propose to require that a State send us the child's full history of living arrangements and the provider information every time the State submits an out-of-home care data file. We want this historical information rather than just updates on the child's living arrangements from one report period to the next and for every out-of-home care episode. We explain our reasons more fully below.

During consultation, many urged us to consider amending the AFCARS regulations with the goal of gathering longitudinal information for children in out-of-home care. Many States already have this capability. Hence, we propose to restructure the provider and living arrangement information so that we can develop comprehensive longitudinal data on a child's entire experience in his or her living arrangements. This is in contrast to the existing AFCARS, which requires that the State title IV–B/IV–E agency submit detailed information only on the child's current placement setting at the end of a report period and provide a count of placement settings during the child's current foster care episode. Moreover, when 12-month annual files are constructed from the AFCARS semi-annual submissions, only the information on the last placement setting is retained. This limits the types of analyses that can be conducted.

Information on each of the child's living arrangements is critical to the CFSRs. In particular, stakeholders believe that comprehensive and longitudinal placement data will better inform CFSR measures related to the stability of foster care placements. For example, once we have comprehensive and longitudinal information, we can follow groups of children who enter foster care at different points in time to assess the impact of various policy changes on the course of their placement changes. Also, we potentially can use the data to improve our placement stability measure by not only analyzing the number of placements that a child experiences in foster care, but the type of placements, as well. We are interested in being able to explore whether children are moving from one living arrangement to another in support of their permanency goals. Further, with the amount of data that comprehensive longitudinal information can provide, ACF and States can be better informed in developing and implementing program improvement plans to address issues raised during a CFSR.

We have heard from **Federal Register** respondents and other stakeholders that placement setting data is the most challenging for States to report and for others to analyze. Our current rules attempt to guide States toward which placement settings count for AFCARS purposes based on criteria such as whether the State agency intends for the child to return to a traditional foster care setting. We realize that such criteria are subjective and are not used consistently across States or even within a State. The proposed living arrangements elements, along with changes to the reporting population, will alleviate this problem by requiring a State to report all living arrangements while a child is under the State agency's placement and care responsibility.

Finally, we would like to note that the information in this living arrangement section is required regardless of whether the living arrangement is under the direct responsibility of the title IV–B/IV–E agency or another private or State agency. We have learned through our AFCARS assessment reviews that some States failed to provide detailed demographic information on foster parents because they were licensed or managed by a private agency. The State must report living arrangement information for all children in the AFCARS reporting population in accordance with the element definitions irrespective of any agreements or contractual arrangements.

Date of living arrangement. In paragraph (e)(1), we propose for the first time that the State title IV–B/IV–E agency collect and report the month, day and year of each of the child's living arrangements in each out-of-home care episode. This is different from the existing elements that relate to placements, in which States report the date the child was placed in the current placement setting, or on a trial home visit, and a count of how many times the child changed placement settings (see appendix A to part 1355, section II, III.B).

In general, States will report the date the child is physically removed and placed by the State agency in the living arrangement. However, there are two exceptions to this general rule—when a child is already in a living arrangement at the beginning of the out-of-home care episode and when a child runs away in the midst of an out-of-home care episode. For a child who is already living in a foster family home, other facility, or has run away from his or her home or facility at the time the State title IV–B/IV–E agency receives placement and care responsibility for the child, the State must provide the date of the State agency receiving placement and care. When a child runs away from a living arrangement during his or her out-of-home care episode, the State must report in this element the date the child runs away. While being on runaway status is not a living arrangement per se, we want the date the child runs away so that that we can calculate the actual time the child is absent from the provider or facility without permission. The original date of placement in a living arrangement prior to a State agency obtaining placement and care responsibility in these circumstances, we believe, is not information we need since it falls outside of how we are defining out-of-home care in AFCARS. Further, we would need additional elements for States to provide more contextual information on why the date of the living arrangement precedes the date of removal report in order to distinguish it from a data error. We welcome comments on this approach.

We are no longer seeking the date that the child begins a trial home visit. Current policy requires a State to report the date the child enters a trial home visit (Child Welfare Policy Manual 1.2B.7 #23). As we explained in the reporting population section of the preamble, if the State title IV–B/IV–E agency returns the child home the child exits the AFCARS reporting population. If the child is visiting family, whether it is for a trial reunification or to remain connected with the family, the State must not indicate any change in the child's living arrangement.

We believe that this new approach to capturing information on dates of living arrangements will provide us with a more complete view of a child's placement experiences, as well as help us to determine whether a child's living arrangements are long-term or change frequently.

Living arrangement type elements. In paragraph (e)(2) through (e)(4), we propose that the State indicate more precisely the type of living arrangement for the child. Currently, the State is required to tell us whether the child is in a preadoptive home, a relative or non-related foster family home, a group home, institution, supervised independent living setting, or whether the child has runaway or is on a trial

home visit (see appendix A to part 1355, section II, V.A). We have found that these options, which were intended to be mutually exclusive, did not capture fully the range of living arrangements. Commenters also opined that more detailed information was needed to better understand the types of homes and facilities where children lived in out-of-home care. Further, since we have expanded our reporting population definition, we have made an effort to better categorize the living arrangements so that we can distinguish them. These distinctions are explained further below.

Foster family home. In paragraph (e)(2), we propose that the State identify whether the child's living arrangement is a foster family home. This is a new element which will allow us to further identify the type of living arrangement for the child. If the child is placed in a foster family home, the State must go on to further categorize the foster family home and provide demographic information for the foster parent(s). Otherwise, the State must indicate another type of living arrangement in which the child is placed. If the child has run away from a foster family home or other living arrangement, then the State must indicate that the child is not in a foster family home.

Foster family home type. In paragraph (e)(3), we propose that the State identify whether the foster family home is licensed, therapeutic, provides shelter care, or is that of a relative, and/or a preadoptive home. This is a new element. The State is to identify all foster family home types that apply. In the current placement setting element in AFCARS, States can choose among three options which were designed to be mutually exclusive: Preadoptive home, relative foster family home (which could be licensed or not) and a licensed non-relative foster family home. These response options and definitions provided us with limited analytical possibilities. For example, we could not determine whether children were placed in preadoptive homes that were also relative homes. Further, we did not know the extent to which children were placed in licensed foster family homes. We believe that requiring the State to indicate separately all possible characteristics of a foster family home will allow us to improve how we use this information. The specific response options are discussed below.

We have added a licensed foster family home as its own response option so that we can clearly identify when a child is placed in a licensed foster family home. While States are not permitted to use title IV–E funds to support unlicensed foster family homes, States may use their own funds to do so. We hope this information will help us learn more about how the use of unlicensed foster family care affects a child's outcomes.

A therapeutic foster home is a foster family that provides specialized care and services. Therapeutic foster homes for children with more challenging behaviors or needs are more prevalent today than when AFCARS was originally developed. Adding this option is in line with our goal to have the data more accurately reflect a child's living arrangements. Further, this element, along with elements that detail the circumstances of the child's removal and the child's conditions, will allow us to get a richer picture of the needs of children in out-of-home care.

We propose to add shelter care foster family home as a response option so that we can track how States use shelter care. We have defined a shelter care foster family home as one that is designated by the State agency or licensed by a licensing entity as a shelter care home and is short-term or transitional in nature. We understand that shelter care is used to provide States with an opportunity to assess the child's needs and future placements while providing care and protection for the child. However, we have some concerns about the stability of children's placements when States use shelter care, and particularly when used for young children. We hope that by capturing the phenomena of shelter care in the data we will be able to analyze how shelter care affects children's permanency. We welcome comments on this response option and its description.

The amended response option of relative foster family home allows us to determine whether or not there is a kin relationship between the child and the foster parents. This response option is consistent with our goal to better understand the relationship between a child in foster care and the child's caregivers. The response option is limited to persons related by a biological, legal or marital connection and does not include fictive kin (i.e., non-relatives who have a pre-existing relationship with the child, such as godparents, neighbors, and teachers).

Finally, we propose a response option of a ''pre-adoptive home.'' However, we propose to define a pre-adoptive home as one in which the family and agency have agreed on a plan to adopt the child. We believe this definition is more precise than the current definition of pre-adoptive home, which only indicates that the family ''intends'' to adopt the child. By changing the definition to include agency participation, we wish to convey concrete circumstances where the agency and the foster family are working in concert to achieve permanency for the child through the foster family adopting the child.

Other living arrangement type. In paragraph (e)(4), we propose that the State identify whether a child is placed in one of eleven living arrangements for a child who is not placed in a foster family home. The proposed living arrangements are mutually exclusive and are as follows: Group home-family-operated, group home-staff-operated, group home-shelter care, residential treatment center, child care institution, child care institution-shelter care, supervised independent living, juvenile justice facility, medical or rehabilitative facility, psychiatric facility, and runaway. This is a new element although the current AFCARS placement setting options include most of these living arrangement types, or a variation thereof. We propose to modify and expand the existing AFCARS list, as we have found that the current AFCARS living arrangement options do not represent adequately the various types of living arrangements for a child in foster care. Further, we propose three of the new living arrangements (juvenile justice facility, medical or rehabilitative facility, and psychiatric facility) because we have expanded our reporting population to include children who are under the agency's placement and care responsibility who may be living in a facility outside the scope of foster care. Commenters also believed that the living arrangement response options should be more detailed and better defined.

We propose to continue to include group homes as a type of living arrangement; however, we propose to require that the State title IV–B/IV–E agency report whether the group home is family operated or staff operated, or regardless of who operates it, a shelter care group home. We propose to define a family operated home as a group home setting that provides 24-hour care in a private family home in which the family members are the primary caregivers. A staff operated group home is characterized as one in which staff provides 24-hour care for children through shifts or rotating staff. A shelter care group home also provides 24-hour care but is designated by the State agency or the State agency's licensing entity as providing shelter care.

Determining whether a child has been placed into a family operated or a staff operated group home will provide us with further insight into the child's

living arrangement. Currently under AFCARS, we define group home as a small, licensed group setting that generally has from seven to twelve children. We have found that this definition was too limiting and did not reflect the actual living arrangements available to children in some States. Therefore, our new proposed definitions do not include a specific number of children who reside in the group setting. Further, as stated earlier, we are concerned about the placement stability of children that are placed in shelter care and want to be able to identify any trends in using shelter care. Our concern is compounded for young children who are placed in shelter care facilities that involve congregate (group) care, so we are adding this category as a separate response option. We do not believe it is necessary to determine whether shelter care group homes are operated by a staff or family, but welcome comments on this response option.

We propose to add residential treatment centers as a type of living arrangement and define them as facilities that are for the purpose of treating children with mental health or behavioral conditions. Currently, in AFCARS, we include ''residential treatment facilities'' in the definition of ''institutions,'' rather than as a separate option. We propose to make this a separate and distinct option so that we may identify a child's living arrangement with more specificity and detail.

We propose to identify a child care institution as a new living arrangement type. We do not believe that the current AFCARS definition of an ''institution'' accurately reflects the type of living arrangements in which children reside because the definition does not provide enough specificity. We are defining a child care institution as a private facility, or public child care facility for no more than 25 children, which is licensed by the State or tribal licensing authority. This definition is a statutory definition for the title IV–E program which we believe is most suitable here as well. We exclude other institutions whose primary purpose is to secure children who have been determined to be delinquent from this definition of a child care institution. Furthermore, we are modifying the current definition of institutions to exclude residential treatment facilities, which we now include as a living arrangement for States to report separately.

We propose to identify a child care institution that is also designated as a shelter care facility. This is a new response option so that we can examine the use of shelter care as discussed previously. We welcome comments on this response option.

We propose to maintain supervised independent living as a living arrangement and propose one change to the definition that currently appears in AFCARS for consistency with the reporting population definition. Currently, the definition of supervised independent living is an alternative transitional living arrangement where the child is under the supervision of the agency. We want to be clear that the State is only to report living arrangements where the child is under the placement and care of the State, not simply being supervised by the State.

We propose for the first time that the State indicate whether a child's living arrangement is a juvenile justice facility. We are defining a juvenile justice facility as a secure facility or institution in which alleged or adjudicated juvenile delinquents are housed while under the State agency's responsibility for placement and care. This definition is broad enough to include all manner of juvenile facilities, whether they are locked or employ some type of treatment component.

We are adding a medical or rehabilitative facility as a new living arrangement type. We define a medical or rehabilitative facility as one where a child receives medical or physical health care. This could include a hospital or facility where a child receives intensive physical therapy.

We also propose for the first time that the State report whether a child is in a psychiatric facility. We are defining a psychiatric facility as one in which a child receives emotional or psychological health care. This includes both psychiatric hospitals and residential treatment centers.

Finally, we have defined the response option of runaway as a child who has left without authorization any home or facility in which the child was placed. The current living arrangement definition of runaway refers to a child who has ''run away from the foster care setting.'' We have broadened the definition so that it is clear that this runaway response option must be used any time a child has left a living arrangement without authorization.

We propose to remove trial home visits as a possible response option, because we do not view a trial home visit as a specific living arrangement as discussed above.

Private agency living arrangement. In paragraph (e)(5), we propose that the State title IV–B/IV–E agency collect and provide information about whether each of the child's living arrangements are licensed, managed, or run by a private agency. This is a new element. The State is to indicate whether the living arrangement has private agency involvement. If the State has indicated in the previous element that the child has run away, the State is to so indicate here for consistency purposes.

As States increasingly use private agencies to perform a variety of child welfare services, there are important implications for the State's oversight of its responsibilities to children in foster care. We have learned from the CFSRs that States have had varied levels of success with contracting out child welfare services. We believe that by tracking the use of private agency involvement in living arrangements, we may be able to analyze its impact on child outcomes. We welcome comments on this proposal.

Location of living arrangement. In paragraph (e)(6), we propose that the State title IV–B/IV–E agency continue to report whether the child has been placed outside of the reporting State (see appendix A to part 1355, section II, V.B). If the child has run away, the State is to so indicate. As with the current AFCARS, only the State with placement and care responsibility of the child should include the child in the reporting population. With this information ACF and States may be able to explore the extent to which out-of-State placements occur, the reasons for those placements, and to what extent they affect timely permanency for children. Additionally, this information is required by statute at section 479(c)(3)(C)(iii) of the Act.

State or country where the child is living. In paragraph (e)(7), we propose that the State title IV–B/IV–E agency report the FIPS code of the State or country outside of the U.S. where the child is placed for each living arrangement that is outside of the reporting State. Some commenters requested that we propose an element in AFCARS that identifies where children in interstate placements are located.

Federal law is clear that delays in foster or adoptive interjurisdictional placements are not to be tolerated (section 471(a)(23) of the Act). Our analysis of existing data on out-of-State placements demonstrates that it takes much longer to achieve permanency for children who are placed out-of-State compared to children whose placements are intrastate. We hope that expanding on this information will support more sophisticated analyses of out-of-State placements. We believe that requiring States to identify the specific location of a child's out-of-State placement is consistent with the statutory

requirement that a State have a Statewide information system from which the State can readily identify the location of a child in foster care, or who has been in foster care in the preceding 12 months (section 422(b)(8)(A)(i) of the Act).

Number of siblings placed together. In paragraph (e)(8), we propose that the State title IV–B/IV–E agency report the number of the child's siblings who are placed together with the child who is the subject of the record, as of the last day of the child's stay in that living arrangement. In the case of an ongoing living arrangement at the end of a report period, the State is to report the number of siblings in the same living arrangement on the last day of the report period. States are not to include the child who is the subject of the record in the count of siblings placed together. For example, if the child is placed in a foster family home with the child's two sisters, the State would indicate ''2'' for this element because the total should not include the child who is the subject of the record.

This information, in conjunction with the family identification number and number of siblings with child at the time of removal, will increase our ability to identify sibling groups in out-of-home care. We are requesting this information because we are often asked by stakeholders whether sibling groups are being placed together in out-of-home care. This information will allow States and the Federal government to analyze how often siblings are placed in living arrangements together when placed out of their own homes. As noted earlier, this information also will be useful in the CFSR process as it will provide rich information about patterns of sibling placements in terms of the current status of the child and for sampling and data profile purposes as well.

Number of children living with the minor parent. In paragraph (e)(9) we propose the State report the number of children living with their minor parent in each living arrangement. If the child who is the subject of this record is not a minor parent, the State agency must leave this element blank. We propose that a State agency include in this count only those children for whom the minor parent is responsible *and* who are in the same living arrangement, not those children who are also in the out-of-home care reporting population on their own merit and who may or may not be placed with their minor parent.

For example, if a teenager is in a child care institution while the teenager's infant child is in out-of-home care in the foster family home of the teenager's aunt, the State would report ''0'' for this element. Further, if a teenager's infant child has been removed from his or her care, the State agency has assumed placement and care responsibility and placed the child in the foster family home of the teenager's grandmother, the State would report ''0'' for this element even if the teenager is also placed in the foster family home of the grandmother.

We are requiring that States report this information because we want to know when a minor parent in out-of-home care is responsible for the care of his or her own child living with him or her. In general, children of youth in out-of-home care who are living with their minor parent(s) are not themselves considered to be in out-of-home care if they have not been removed from their parent(s) and placed under the State agency's placement and care responsibility. However, these young parent-child(ren) families require enhanced resources from the child welfare system. This is acknowledged in the title IV–E program in which a minor parent's foster care maintenance payment must include the costs for any child placed in the same living arrangement with him or her. In addition, the out-of-home care patterns of these young parent-children families may differ in a variety of ways from those exhibited by youth in care who are not parents. There could also be differences among those youth who are parents, relating to whether or not their children are living with them. For example, youth with children living with them in care may have different permanency plans, living arrangements, lengths of stay in foster care, exit destinations, and/or patterns of re-entry than other youth in care. Examination of trends in these patterns can inform State policy so that necessary resources can be made available to meet the needs of these families.

Foster parent's marital status. In paragraph (e)(10), we propose that the State title IV–B/IV–E agency continue to report information regarding the foster parent's marital status. This is basic demographic information about the child's provider that we must continue to collect in AFCARS because it is required by section 479(c)(3)(A) of the Act. However, we have modified the name of the element and added to the definition for clarity and accuracy. Currently in AFCARS, this element is called ''Foster Family Structure'' and the State must report whether the child's foster parent(s) are a married couple, unmarried couple, single male or single female (see appendix A to part 1355, section II, IX.A). We now propose to include these same four marital status options, as well as one other category of marital status: separated. Additionally, we specify that the State agency should report this information for each foster family home in which the child is placed.

We propose that a ''married couple'' means that the foster parents are considered united in matrimony according to the laws of the State in which they live. This category would include common law marriage, where State law provides for such. The State agency should choose ''unmarried couple'' if the foster parents live together as a couple, but are not united in matrimony according to the laws of the State in which they live. ''Separated'' means that the foster parents legally are separated, or are living apart, but remain legally married. A single female/male is a foster parent who is not married, and is not living with another individual as part of a couple. If a State indicates that the foster parents are a married couple or an unmarried couple, then the State is also to provide information on all elements for a 'second' foster parent in the elements that follow. If the foster parent is a single person, or separated, then the State must provide information for the data elements regarding one foster parent only. There is not a separate category for a foster parent who is a widow/widower. Such individuals should be reported according to their current marital/living situation (e.g., single if the foster parent has not remarried or is living as part of an unmarried couple.)

Foster parent(s) relationship to the child. In paragraph (e)(11), we propose that the State title IV–B/IV–E agency identify the familial relationship, if any, of the foster parent(s) to the child for each foster family home in which the child is placed. This includes pre-adoptive homes in which the child is placed. We propose to include the following relationship options: siblings; maternal and paternal grandparents; or other maternal or paternal relatives. Relatives, by definition, are limited to persons related by a biological, legal or marital connection and do not include fictive kin. We propose that the State title IV–B/IV–E agency will report also if the child is not related to the foster parent(s). Currently in AFCARS, States report on whether a child is placed in a relative foster home, but we do not know the specific relative with whom the child is placed. We believe that it is essential to obtain this information, primarily so we can understand the trends surrounding relative, and particularly grandparent, care of children in the child welfare system. Further, several commenters suggested

that we collect more detailed information on the relationship between foster parents and their charges. The data we derive from this element also may provide insight into the extent to which States involve paternal relatives in caring for a child whose parents or legal guardians cannot care for him or her.

Year of birth for foster parent(s) elements. In paragraphs (e)(12) and (e)(16), we propose that the State title IV–B/IV–E agency collect and report the year of birth for the foster parent(s). States collect similar information in the existing AFCARS (see appendix A to part 1355, section II, IX.B). Currently in AFCARS, we instruct the State agency to estimate a year of birth if the foster parent(s) exact birth date is unknown. We propose to delete this instruction to estimate the foster parent(s) date of birth. We expect that the State will always have the date of birth for a foster family provider with whom a child under State responsibility is placed. We also propose that the State title IV–B/IV–E agency report the foster parent(s) year of birth for every foster family home in which the child has been placed. This is basic demographic information about the child's foster parent that we must collect in AFCARS, as it is statutorily required.

Race of foster parent(s). In paragraphs (e)(13)(i)–(vii) and (e)(17)(i)–(vii), we propose that the State title IV–B/IV–E agency collect and report the race of the foster parent(s). The proposed element is similar to that in the existing AFCARS requirements (see appendix A to part 1355, section II, IX.C). This is basic demographic information about the child's foster parent that is statutorily required.

Currently in AFCARS, we explain that an individual's race is determined by how they define themselves or by how others define them. We propose to modify this explanation. We now propose that race and ethnicity are characteristics that the individual determines and self-identifies, irrespective of how others define them. This is consistent with the Office of Management and Budget's standards regarding racial identification. We propose to include the following racial categories: American Indian or Alaska native; Asian; Black or African American; Native Hawaiian or other Pacific Islander; or White. The racial categories are consistent with the Office of Management and Budget's (OMB) standards for collecting information on race. Additionally, we include new categories for individuals who decline to identify their race or whose race is unknown.

Latino/Hispanic ethnicity of foster parent(s). In paragraphs (e)(14) and (e)(18), we propose that the State title IV–B/IV–E agency report the Latino/Hispanic ethnicity of the foster parent(s). The proposed element is similar to one in the existing AFCARS requirements (see appendix A to part 1355, section II, IX.C). Similar to the race element, we propose that the State title IV–B/IV–E agency report whether the foster parent(s) self-identify as being of Hispanic or Latino ethnicity. Foster parents may decline to identify whether they are of Hispanic or Latino ethnicity or indicate that they do not know their ethnicity. This is basic demographic information about the child's foster parent that is statutorily required.

Language of foster parent(s) elements. In paragraph (e)(15) and (e)(19), we propose new elements for the State to collect and report information on the foster parent(s) languages. We propose to collect this information because we believe knowing the foster parent's language will assist the worker in providing services to the child and family. The foster parent language elements in subparagraphs (i), language used and (ii), language preference, mirror the language elements for the child. We do not believe it is necessary to have an element for the State to indicate whether the foster parent is verbal because we expect that all foster parents will be verbal, which is inclusive of using sign language.

Sources of Federal assistance in living arrangement. In paragraph (e)(20), we propose that the State collect and report the Federal assistance that support room and board payments made on behalf of the child in each living arrangement. The State is to indicate all sources of Federal assistance that apply. This element is a significant change from the existing AFCARS element on financial assistance, as we want to capture the types of Federal funds that are supporting the child's maintenance (i.e., room and board) in out-of-home care and we propose that the State report this information for each of the child's living arrangements. State agencies may indicate that the child's room and board are supported with title IV–E foster care, title IV–E adoption subsidy, title IV–A TANF, title IV–B Child Welfare Services, title XX Social Services Block Grant, other Federal funds, or no Federal funds.

We have specified in the response options that States are to report a funding source of either title IV–E foster care or adoption subsidy when the child is *eligible* for such funds. Eligible means that the child has satisfied fully all of the criteria for the foster care maintenance payments program in section 472 of the Act (including requirements for a placement in a licensed or approved foster family home or child care institution) or section 473 of the Act (including requirements for the child to be placed in a preadoptive home with an adoption assistance agreement signed by all parties in effect). We chose to specify that the child be eligible for such funds, rather than paid such funds because States are reimbursed by the Federal government for allowable title IV–E foster care maintenance payments and adoption subsidies. States therefore submit claims for their allowable costs after they have made payments on behalf of eligible children, sometimes months after the fact. The timing of States' reimbursement for title IV–E payments and submitting AFCARS reports may be such that a child may not have actually ''received'' a Federal payment at the time that we are requesting such information.

We have tied the reporting of this information to a particular day within each living arrangement. If the child has already left a living arrangement by the time the State reports the information, then the State is to report the Federal funds supporting the child's maintenance on the last day the child was in the living arrangement. If the child, however, is in a living arrangement on the last day of the report period, then the State is to report the Federal funding sources on the last day of the report period. We propose to focus on the Federal funds provided on a particular day within a living arrangement so that we can better analyze the sources of Federal funds supporting children's room and board in out-of-home care. Further, with the proposed new element amount of payment (see discussion below), we can estimate better the title IV–E foster care and adoption assistance payments made in each living arrangement.

Finally, although some commenters suggested that financial information was not necessary, we propose to collect this information because section 479(c)(3)(D) of the Act requires that we collect the nature of assistance provided by Federal, State, and local adoption and foster care programs.

Amount of payment. In paragraph (e)(21), we propose that the State report the per diem amount paid on behalf of a title IV–E eligible child for either the last day of the living arrangement, or the last day of the report period if the living arrangement is ongoing. The State is to report this information for every living arrangement in which title IV–E adoption assistance or title IV–E foster

care was a source in accordance with the element described in paragraph (e)(20). If no such payment has been made, the State title IV–B/IV–E agency should so indicate by reporting a zero payment.

Our proposal is distinct from the current AFCARS regulation (see appendix A to part 1355, section II, XII). Currently, States report the total amount of the monthly foster care payment, regardless of the source, i.e., whether it was Federal, State or another source of funds. States also report the total monthly amount of the adoption subsidy for the child and indicate whether the subsidy was paid under title IV–E. We are no longer asking for the State to report the monthly amount, but the daily amount, as we will calculate the monthly rate based on the per diem rate that the State reports to us. As we understand it, State information systems are designed such that the daily rate is readily available for reporting. Therefore, this aspect of the proposal should be less of a burden on States and in line with how their information systems are structured. We also are making a change in that we propose that States report the amount of the payment only when a title IV–E payment is made on behalf of a child. Currently, the State is to report the amount of the payment regardless of the source. This change is made as we primarily are interested in knowing about the amount of funds under the Federal foster care and adoption assistance programs, since these are the two largest programs for which we have fiscal oversight responsibility.

Section 1355.43(f) Permanency Plan Information and Ongoing Circumstances

In paragraph (f), we propose that the State title IV–B/IV–E agency provide information on each permanency plan for the child in every out-of-home care episode.

In general we are expanding our current AFCARS information by increasing the number of permanency plan options, requesting information on concurrent permanency plans, and the ongoing circumstances or issues children and families face while the child is in out-of-home care. We believe these changes will allow us to track better the actual plans that State agencies develop for children in their placement and care responsibility. Further, we believe that getting more comprehensive permanency plan information and a sense of the ongoing circumstances of families over the child's entire involvement with the child welfare system will aid our ability to analyze the data. In particular, this information may inform both the Statewide assessment and onsite portions of the CFSRs. Further, more detailed permanency plan data will allow us to analyze how States are meeting the provisions of the Adoption and Safe Families Act (ASFA) for more timely permanency for children in foster care.

Although Federal regulations (45 CFR 1356.21(g)) require States to develop permanency plans for children in foster care consistent with the program definition, we understand that most States develop and update permanency plans for all children in their care and placement responsibility regardless of the child's living arrangement, consistent with good practice. We will not penalize States for indicating that a permanency plan has not yet been established for those children for whom a permanency plan is not required by Federal rules. Therefore, we propose that States report this information for all children in the out-of-home care reporting population if that information has been collected in accordance with best practices procedures.

Permanency plan. In paragraph (f)(1), we propose to require that States indicate the type of permanency plan established for the child. We propose to include additional permanency plan options and modify the current response options in AFCARS (see appendix A to part 1355, section II, VI) to better reflect our understanding of current State practice.

The State is to indicate that the permanency plan is to ''reunify with parent(s) or legal guardian(s)'' if the State is working with the child's family for a limited time to establish a stable family living environment. This is a modification from the current AFCARS instruction. Currently, States indicate whether a child is reunifying with a parent or principal caretaker from whom the child was removed. We have replaced the term ''principal caretaker'' with ''legal guardian'' because we believe the latter better reflects the persons with whom the State would be working toward reunification. Further, we are no longer limiting reunification to situations in which the plan for the child is to be reunited with the parent or legal guardian from whom the child was removed. Although we understand that States may be required by their own laws to make 'reasonable efforts'' to reunite a child with the person from whom removal occurred, we believe that reunification occurs when a child is reunited with a noncustodial parent, as well.

The State must indicate that the permanency plan is to ''live with other relatives'' when the State is working towards the child living permanently with a relative, other than his or her parents or legal guardians. We are modifying this definition from the existing AFCARS definition to remove the instruction that such relatives are ''other than the ones from whom the child was removed.'' This instruction is no longer necessary given the changes made to the reunification response option above. We modify also the existing AFCARS definition to remove the instruction that ''this could include guardianships'' since guardianships are most often a separate and distinct plan from living with relatives. We describe the guardianship plan options below.

We propose to retain the current plan definition of ''adoption'' which is to facilitate the child's adoption by relatives, foster parents, or other unrelated individuals.

We propose to include ''independent living'' as a permanency plan option, replacing the current AFCARS case plan goal entitled ''emancipation'' to reflect more accurately our intent. We have modified the existing AFCARS definition for ''emancipation'' so that States choose this option when the child either is eligible for, or already receiving independent living services. This is one of the distinguishing factors between the plan of ''independent living'' and of ''planned permanent living arrangement.''

We propose to include ''planned permanent living arrangement'' as a permanency plan option to replace the current AFCARS case plan goal of ''long term foster care.'' This is primarily a name change only, as we have kept the definition similar to that of long term foster care for the planned permanent living arrangement option. The primary reason for this change is that the ASFA removed the plan ''long term foster care'' from the statute and replaced it with ''planned permanent living arrangement'' as a permanency plan. As indicated in comments to the **Federal Register** notice, many States have adopted ASFA's terminology and we wish to reflect that terminology and approach in AFCARS.

We propose to separate the current AFCARS case plan goal of guardianship into relative guardianship and non-relative guardianship as possible permanency plan options. Currently, in AFCARS, relative guardianships are included in the permanency plan option of ''live with a relative,'' which does not allow us to distinguish relative guardianship plans from a plan for the child to live with a relative absent a guardianship arrangement. We are proposing a change to require States to

report when the plan is for the adult relative to become the child's legal guardian. This may not always be the intent with the ''live with relative'' permanency plan option. We also believe that this modification will help us understand the trends related to guardianships. Furthermore, distinguishing between relative and non-relative guardianship arrangements may shed light on how well the agency has preserved ties between the child and family members.

We propose that States indicate the response option of ''non-relative guardianship'' when the State agency intends to establish a legal guardianship with an unrelated individual. This is essentially the same as the current definition of guardianship in AFCARS. However, this definition no longer includes establishing a legal guardianship with an agency as an option. We believe that an agency guardianship is more reflective of a legal status in the process of arranging an adoption in some States or may be part of an agency's efforts in moving towards a planned permanent living arrangement. Therefore, we believe that this is no longer necessary.

Finally, we propose that the State title IV–B/IV–E agency continue to report when the child's permanency plan has not been established. This currently appears in the AFCARS regulation as ''case plan goal not yet established.'' For the reasons described earlier, we believe permanency plan is a more appropriate and accurate term. From our analysis of the existing data we note that some States indicate that a plan has not been established several months into a child's stay in care. We are unclear whether this is an inaccurate reflection of State's permanency planning practices or States are indeed not establishing permanency plans consistent with Federal time frames. Nonetheless, for those children for whom a State has not established a plan, ''permanency plan not established'' must be indicated.

Date of permanency plan. In paragraph (f)(2), we propose that the State title IV–B/IV–E agency report the month, day and year that each permanency plan for the child was established. We propose to collect the dates of each permanency plan because over the course of a child's stay in out-of-home care States often change a child's permanency plan. Thus, we will be able to know all the permanency plans that have been established for the child, as proposed in the previous element, and when they were established.

Concurrent planning. In paragraph (f)(3), we propose that the State title IV–B/IV–E agency indicate whether the State agency has or has not developed a concurrent permanency plan for the child. Only if the State or local agency does not engage in concurrent planning would it report that this element is not applicable for the child. This is a new proposed data element which was requested by some stakeholders. Since the passage of the Adoption and Safe Families Act of 1997, which permits and encourages the use of concurrent planning, we know that many States have moved toward identifying an alternate plan for a child. Usually, a State will identify an alternative plan that the State agency will work towards at the same time as reunification, so that permanency can still be achieved timely should efforts toward reunification with the parent or legal guardian not be successful. We believe that information on concurrent planning will demonstrate the extent to which States develop alternative permanency plans for a child and use creative thinking to maximize a child's permanency options. If the State title IV–B/IV–E agency has not established a concurrent plan, we instruct the State agency to leave blank the remaining elements on concurrent permanency plans.

Concurrent permanency plan. We propose in paragraph (f)(3)(i) that the State identify the concurrent plan for the child, as applicable. We propose that the concurrent plan options include: Live with relatives; adoption; independent living; planned permanent living arrangement; relative guardianship; and non-relative guardianship. A concurrent plan is usually associated with a reunification plan, so we have not included reunification in the response options. We considered excluding independent living and planned permanent living arrangement from the list of concurrent permanency plans because we do not believe that these are viable alternatives to reunification from a practice perspective. However, we believe that regardless of our concerns about State practice in this area, our responsibility here is to collect information on all possible alternatives that a State agency may choose for a child. This information would allow us to analyze the extent and efficacy of a State's use of concurrent planning.

Date of concurrent plan. In subparagraph (f)(3)(ii), we propose that the State title IV–B/IV–E agency report the month, day and year that each concurrent plan, if any, is established. This is a new proposed data element that will help us to determine how long and under what circumstances an agency may employ concurrent case planning to achieve permanency for a child in its care. As with permanency plans, States are to provide this information for every concurrent plan established for the child.

Date of periodic review or permanency hearing. In paragraph (f)(4), we propose that the State title IV–B/IV–E agency report the date of each of the child's periodic reviews or permanency hearings required by section 475 of the Act. This element is different than the one in the current AFCARS requirements (see appendix A to part 1355, section II, I.E), in that we are now seeking this information on every review or hearing versus the most recent in the existing AFCARS. We believe that this information is important so that we can analyze the timeliness of the permanency decisions made for children in foster care.

Juvenile justice involvement. In paragraph (f)(5), we propose a new data element that requires a State to indicate whether a child has been involved in the juvenile justice system in the form of an alleged or adjudicated delinquency or status offense during each six-month report period. For children who remain in out-of-home care from one report period to the next, the State is to provide the entire history of whether the child was involved with the juvenile justice system. States are to report all that apply rather than a single category of juvenile justice involvement, as it is possible that a child could have been involved in both status and delinquent offenses. If the child has no alleged or adjudicated status offenses or delinquencies, then the State is to report that the child is not involved with the juvenile justice system.

We propose this new element because we believe, as do many stakeholders who provided comments and consultation to us, that it is important to understand more about young people in out-of-home care who are involved with the juvenile justice system. Currently, in AFCARS, we have no way of identifying young people who are involved with the juvenile justice system. We have heard through a variety of sources, including the CFSRs, that it is important to clarify the characteristics of the reporting population so that we can analyze potential differences in the experiences of children involved in the juvenile justice system versus those who are not.

Additionally, States indicate that they have experienced a marked increase in the number of juvenile justice-involved children in their child welfare systems. This new data element will allow us to establish those numbers and determine whether or not juvenile justice-involved

children have different experiences than other children in out-of-home care. Analyzing this data also may have implications for the manner in which States provide services to juvenile justice-involved children in out-of-home care, either individually or as a class. It similarly will assist States and the Federal government to understand the experiences of children who are dually involved in out-of-home care and juvenile justice, which in turn, will help States in their program improvement efforts to better serve such children.

We considered whether to require States to provide more detail about a child's juvenile justice involvement, such as whether the youth was on probation, through several new elements. However, we settled on this one data element which will tell us what we believe is the most critical concern, which is whether the youth who is in out-of-home care is involved with the juvenile justice system because he/she committed or is alleged to have committed a juvenile offense.

Circumstances at initial permanency plan. In paragraph (f)(6), we propose that States collect and report data for the first time about the circumstances surrounding the child and his/her family at the time of the development of the initial permanency plan, typically within 30 to 60 days of the child's placement in out-of-home care. States must indicate whether the circumstances are apparent, or if the family has been assessed to be in need of assistance with regard to the circumstances. This information will be collected in addition to the listed circumstances at the time of removal and at subsequent points discussed later in this proposed rule.

We propose that States report this information to us because we are interested in getting a sharper picture of the circumstances surrounding the child while in out-of-home care. Here we are interested in all circumstances that surround the child and family while the child is in out-of-home care and not just those events that may have precipitated the child's placement in out-of-home care. Currently, we are collecting this information only at removal, when the agency may know the least about the child and family. Knowing the total array of circumstances for the child and family at the time the State agency develops the initial permanency plan will provide a more complete picture of the challenges faced by the system and its clients. We propose that States collect and report this information at the time of the development of the permanency plan because we believe that is when many States have completed a more thorough assessment of the child and family. This information will facilitate identification of more complex cases that require more resources from the less complex cases. It also will permit an assessment of ''cumulative risk'' for children that could be related to such phenomena as length of stay and reason for discharge.

Most of the response options for this element are the same as those for the element ''child and family circumstances at removal'' described in paragraph (d)(5). However, we have added the response option of ''none of the above'' for a family and child for whom all preexisting issues have been resolved and no new issues have arisen. We also have deleted the response options for status offenses, delinquency and runaway because they are reported in other elements on an ongoing basis. States report whether a child has run away continuously through the living arrangement elements described in paragraphs (e)(1) and (e)(4) and report whether a child is involved with the juvenile justice system each report period in the element described in paragraph (f)(5). We considered going further and eliminating certain response options based on what we believed were unlikely scenarios at the time of the development of the permanency plan, but decided against doing so. For example, we considered eliminating ''abandoned'' as a response option at the time of the development of the initial permanency plan based on our original thinking that abandonment is a condition that is associated with the time of removal only. However, we now believe that we should allow for the possibility that the State agency may not have had enough information to support a response of abandonment at the time of removal, but did at the later point of developing the permanency plan. We welcome comments on this proposal.

Annual circumstances. In paragraph (f)(7), we propose for the first time that the State collect and report information on the circumstances of the child and family that coincide with the child's permanency hearing, or no more frequently than annually. Like the preceding element, we propose this element in an effort to get a more comprehensive picture of the child and family. Again, we propose a similar set of response options as in the element ''circumstances at the initial permanency plan.'' However, we would like to note that States must consider these definitions as they relate to children who have not been in their own homes for a year or more. For example, a year into a child's out-of-home care stay, the child may allege that he or she was sexually abused while still residing at the parent's home. In this circumstance, the State agency would indicate in the annual circumstances element that sexual abuse is a circumstance at this annual marker only if it is still relevant to the permanency and/or planning for the child, such as when the agency has determined that there is an assessed risk of its reoccurrence or the child and parent are receiving counseling as a result of the previous sexual abuse. We welcome comments on this proposal.

Annual circumstances date. In paragraph (f)(8), we propose that the State indicate the date each year that the State provided the information for the preceding element ''annual circumstances.'' This information is necessary so that we can ensure that this information is being reported in a timely manner.

Section 1355.43(g) General Exit Information

In paragraph (g), we propose that the State report information that describes when and why a child exits the out-of-home care reporting population, if applicable.

Date of exit. In paragraph (g)(1), we propose that the State title IV–B/IV–E agency collect and report the month, day and year that the child exited the out-of-home care reporting population, if applicable. We propose that the State report every exit date from the out-of-home care reporting population. An exit occurs when the agency's placement and care responsibility for the child has ended, the State agency has returned the child home, or the child reaches the age of majority and is not receiving title IV–E foster care maintenance payments (see 1355.41(a)(2)).

Currently, in AFCARS, we ask States to report the most recent ''date of discharge'' from foster care only (see appendix A to part 1355, section II, X.A). Therefore, our proposal is new in that we are requesting the date of every exit and clarifying that States must report an exit when a child is no longer under the agency's placement and care versus being ''discharged.'' States will report a date of exit when a child is returned to live with his/her parents even if the State agency continues to hold placement and care responsibility of the child, as discussed earlier in the out-of-home care reporting population section. If the child exited through adoption, the State agency must enter the date that the court finalized the adoption as the exit date. If the child has not exited, the State agency should leave this data element blank.

Exit transaction date. In paragraph (g)(2), we propose that the State title IV–B/IV–E agency report the date that the State agency entered the child's exit date into the information system. This date must accompany every exit date for the child. As with the removal transaction date, this must be a computer generated, non-modifiable date and be entered within 15 days of the child's exit. Currently, in AFCARS, we require the State title IV–B/IV–E agency to enter transaction dates within 60 days of the event (see appendix A to part 1355, section II, X.A), but now propose to require the transaction date much earlier, primarily to ensure the quality of this data. The child's exit date is one of the most critical data elements in AFCARS, since it is the end point for several of the CFSR outcome measures. It is also critical because the exit date coupled with the removal date assists in defining the population of children in foster care in the nation and is absolutely critical in order to understand a State's child welfare system. Therefore, it is incumbent on the Department to ensure the number of children in foster care provided to the public and the Congress is accurate and verifiable.

As we noted in the preamble to the ''removal transaction date'' element, some commenters to the **Federal Register** notice suggested that entering the transaction date should be secondary to ensuring child safety. While we agree that child safety is paramount, we have found that States report more accurate, high quality data when the transaction date is entered proximate to the event that it describes. We understand the competing demands placed on State child welfare agencies. However, we have not changed our position that States must enter the child's exit date into the system timely, which we are proposing to be within 15 days rather than 60 days of the child's exit from out-of-home care. As we indicated earlier, information from our analysis of the data submitted from the FY 2003 and FY 2004 report periods indicates that two-thirds of the cases are entered within 15 days of the child's exit. Therefore, we do not believe that this proposed change will represent a significant departure from State practice in most instances.

Exit reason. In paragraph (g)(3), we propose that States collect and report information on the reason for a child's exit from the out-of-home care reporting population, if applicable, which we currently identify as ''reason for discharge'' in AFCARS (see appendix A to part 1355, section II, X). We are proposing that the exit reason be provided for each of the child's exits from the out-of-home care reporting population.

We propose the following exit reasons, which are similar to the current response options in AFCARS: Reunify with parents/legal guardians; live with other relatives; adoption; emancipation; relative guardianship; non-relative guardianship; transfer to another agency; death of child; and runaway. Below we discuss each of our proposed exit reasons.

States are to indicate that the child has exited to ''reunify with parents/legal guardians'' when the child has returned to a parent or legal guardian. This differs from the current AFCARS response option which more broadly captures a child's return to the home of his or her primary or principal caretaker. We have made an effort throughout this proposed regulation to remove the term caretaker, as we believe it is too vague. Further, we specify that a State is to include in this exit reason a child who is returned home to live with a parent under the State agency's continued placement and care responsibility.

We propose to retain the response option of ''live with other relatives;'' however, we have modified the definition. Currently, AFCARS instructs States to select this response option when the child has exited to live with a relative other than the one from whose home he or she was removed. We propose to instruct States instead to select this option when the child exits to live with a relative who is not his or her parent or legal guardian. Relatives are limited, by definition, to persons related by a biological, legal or marital connection. Fictive kin are not relatives for AFCARS purposes.

We propose to modify the current response option of ''guardianship'' so that States can specifically indicate whether the child exited the reporting population to a relative or non-relative guardianship arrangement. We believe that this level of specificity will allow us to better analyze children's outcomes.

We propose to modify the exit reason of ''transfer to another agency'' to refer to situations in which the responsibility for the placement and care of the child was transferred to a different agency either within or outside of the State. This is a clarification in that we are using the term ''placement and care'' rather than simply ''care'' as is used currently in AFCARS. States are to report an exit when the actual ''placement and care'' for the child has changed. There may have been some confusion about when States are to report a transfer, since States organize their child welfare agency structures differently. States are to report this exit reason when the State title IV–B/IV–E agency transfers its placement and care to an agency outside of the IV–B/IV–E agency. These transfers often are made to a juvenile justice or disability agency, if these agencies are external to the title IV–B/IV–E agency. However, if such agencies reside within a single title IV–B/IV–E agency, such internal transfers of responsibility should not be included in this response option.

We propose to modify the current AFCARS definition of the response option ''runaway'' to specify that the agency's placement and care responsibility ended as a result of the child's running away. We want to be sure that it is clear that an exit is reported only when the agency is no longer responsible for the child. If a child remains under the State agency's responsibility for placement and care but the child is on runaway status, the State is to continue to report the child to AFCARS with a living arrangement of ''runaway.''

We have included the existing response options of ''exit to adoption,'' ''emancipation,'' or ''death of child'' without change.

Death due to abuse/neglect in care. In paragraph (g)(4), we propose that when the State title IV–B/IV–E agency indicates an exit reason of ''death of child'' that the State also indicate whether the death occurred as a result of the provider's abuse or neglect of the child. We propose that the State indicate whether the State has concluded that the child's death is due to the provider's abuse or neglect of the child or that the cause of the child's death has not yet been determined if there is an ongoing investigation to determine the culpability of the provider in the child's death.

We propose this element to supplement information we collect in CAPTA about child fatalities and child maltreatment. We believe that the incidence of such deaths is minimal; children are more likely to die in out-of-home care as a result of natural causes or accidents. Irrespective of the cause, approximately 560 fatalities occurred in FY 2004 according to AFCARS data. However, we are interested in attempting to pinpoint the actual incidence of maltreatment related fatalities. In determining which response options to propose for this element, we struggled with striking a balance between getting timely data and data that is accurate and fair towards the provider. We acknowledge that many State agencies may not have completed

their investigations into the cause of a child's death where maltreatment by a provider is suspected by the end of a report period, so that the data we receive may underestimate the actual incidence of child fatalities due to a provider's abuse or neglect. We welcome comments on this proposal.

Transfer to another agency. In paragraph (g)(5), we propose that when the child's exit reason is ''transfer to another agency,'' that the State title IV–B/IV–E agency collect and report, where applicable, the type of agency to which the child's placement and care was transferred. This is a new proposed data element. We propose to include as possible options: a tribe or tribal agency; a juvenile justice agency; a mental health agency; another State agency; or a private agency. We are requiring the State to report the type of agency to which a child is transferred because we agree with stakeholders that this will enhance our ability to know more about what happens to children who leave the child welfare system. Further, this information can be used to meet the requirements of CAPTA for annual State data on the number of children transferred from the child welfare system into the custody of the juvenile justice system (section 106(d)(14) of CAPTA).

Circumstances at exit from out-of-home care. In paragraph (g)(6), we propose for the first time that the State agency report the child and family circumstances that exist at the time of the child's exit from out-of-home care. We have carried over the same set of response options from the other child and family circumstance elements; however, we acknowledge here that these may apply to a child or family differently than they do at an earlier point in time. Therefore, we have instructed States to indicate that a particular circumstance exists if the State agency has put in place referrals for services or is providing monitoring or after care services with regard to that circumstance. We do not believe it is realistic to expect that States will have helped children and families to resolve all issues that surround a child's placement in out-of-home care, but rather hope that this element, in combination with the other circumstances elements, will provide us with a better picture of the challenges and needs of child welfare clients.

For example, at the time of removal, the State agency indicates that one of the child and family circumstances is the child's behavior problem. When the child exits out-of-home care to reunification with the family, the child may still have a behavior problem, but throughout the child's stay in out-of-home care the State agency provided services to help the child and family manage these behaviors and the State agency also has arranged after care services to address any ongoing behavior problems. In such a situation, the State agency would indicate the child's behavior problem as a circumstance at exit. We welcome comments on this proposal.

Section 1355.43(h) Exit to Adoption Information

In paragraph (h), we propose that a State collect and report information on the circumstances of a child's exit from the AFCARS reporting population to a finalized adoption. This information should only be reported if the exit reason reported under paragraph (g)(3) is adoption. As indicated earlier, we require that States report much of this information in the existing AFCARS, but in a separate adoption file.

Adoptive parent(s) marital status. In paragraph (h)(1), we propose that the State provide information on the marital status of the adoptive parent(s). This is similar to an existing AFCARS element in the adoption file (see appendix B to part 1355, section II, VI.A). This information is being collected for the purpose of obtaining basic demographic information about the adoptive family consistent with the mandate at section 479(c)(3)(A) of the Act. In this element we clarify how States should categorize the adoptive parent(s) marital status appropriately. There is not a separate category for an adoptive parent who is a widow/widower. Such individuals should be reported according to their current marital/living situation.

Adoptive parent(s) relationship to the child. In paragraph (h)(2), we propose to expand the current requirement that the State provide information on the adoptive parent's relationship to the child (see appendix B to part 1355, section II, VI.D) to include more response options that describe kin relationships. The proposed element requires the State to indicate whether the relative relationship between the adoptive parent and child is that of a maternal or paternal grandparent, another maternal or paternal relative or a sibling. The relative response options are limited to persons related by a biological, legal or marital connection and do not include fictive kin. States also may select whether the child is unrelated to his or her adoptive parent or the adoptive parent was the child's foster parent. This element requires the State to select all applicable responses.

We believe that with the emphasis in ASFA on using relatives as a resource for children, it is important to understand the trends surrounding relative adoptions. We also believe it is important to know the extent to which both maternal and paternal relatives are being utilized as adoptive resources.

Adoptive parents' date of birth elements. In paragraphs (h)(3) and (h)(6), we propose that a State report the adoptive parents' date of birth. This is similar to an existing data element where a State reports the adoptive parents' year of birth (see appendix B to part 1355, section II, VI.B). We believe that States already collect a full date of birth versus a year of birth, thus this change will not present an undue burden. This information is being collected for the purpose of obtaining basic demographic information about the adoptive family consistent with the mandate at section 479(c)(3)(A) of the Act.

Adoptive parents' race elements. In paragraphs (h)(4)(i)–(vii) and (h)(7)(i)–(vii), we propose to continue to collect information on the race of the adoptive parents. As discussed in the sections regarding the child and foster parent's race, the racial categories in paragraphs (h)(4)(i)–(v) and (h)(7)(i)–(v) are consistent with the OMB standards for collecting information on race. The State is to allow the adoptive parent(s) to determine his or her own race. If the adoptive parent's race is unknown, the State is to so indicate, as outlined in subparagraphs (h)(4)(vi) and (h)(7)(vi). It is acceptable for the adoptive parent to identify with more than one race, but not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. We anticipate that States will be able to obtain information on the race of the adoptive parent(s) in most instances. This differs from an inability to provide information on the race of a biological parent who abandoned a child currently in out-of-home care. If, however, the adoptive parent declines to identify his or her race, the State must indicate that this information was declined, as outlined in subparagraphs (h)(4)(vii) and (h)(7)(vii).

Adoptive parents' ethnicity elements. In paragraphs (h)(5) and (h)(8), we propose that a State report the Hispanic or Latino ethnicity of the adoptive parent. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, the State may report whether the adoptive parent's ethnicity is unknown or whether the adoptive parent has declined to provide this information.

Interstate or intercountry adoption. In paragraph (h)(9), we propose that the

State identify whether the child has been placed for adoption outside of the State or country. This is a new element for the out-of-home care data file, although there is a similar element in the existing AFCARS adoption file and the proposed adoption assistance and guardianship subsidy file (1355.44(c)(7)). We believe that gathering information on the location of children in out-of-home care who are placed for adoption may allow us to identify trends and/or challenges in interjurisdictional adoptions that occur across State lines or in other countries.

Interjurisdictional adoption location. In paragraph (h)(10), we are requiring for the first time that the State identify the FIPS code of the specific State or country outside of the U.S. in which the child was placed for adoption or the State or country into which the child was placed. This element in combination with the previous element on intercountry and interstate adoption will provide information on the extent to which States are maximizing all potential adoptive resources for waiting children and will assist the Department in responding to questions and concerns regarding interjurisdictional placement issues.

Adoption placing agency or individual. In paragraph (h)(11), we propose that the State provide information on the entity or individuals that assist in placing a child for adoption. This data element is required in the existing AFCARS adoption file and is proposed for the adoption assistance and guardianship subsidy file in this NPRM; however, the response options are different in order to be relevant to the out-of-home care population. States here can indicate whether the placing agency was the State title IV–B/IV–E agency or a private agency or tribal agency under contract or agreement with the State.

1355.44 Adoption Assistance and Guardianship Subsidy Data File Elements

We propose to add a section 1355.44 which provides all elements for the adoption assistance and guardianship subsidy data file. Each element is described in detail, and the acceptable response options also are defined. (Attachment B contains a quick reference to all the adoption assistance and guardianship subsidy date file elements.) The State agency must collect and report the information as described in these elements for each child in the adoption assistance and guardianship subsidy reporting population.

Section 1355.44(a) General Information

In paragraph (a) we propose to collect general information that identifies the State submitting the adoption assistance and guardianship subsidy file and the child.

State. In paragraph (a)(1), we propose that the State responsible for reporting the child identify itself using the numeric Federal Information Processing Standards (FIPS) code. The definition of this element is the same as the one proposed in the out-of-home care data file. We need to have this information in the adoption assistance and guardianship subsidy data file as well as the out-of-home care data file because the State will submit the two files to us separately.

Report date. In paragraph (a)(2), we propose that a State continue to indicate the month and year of the report period. Again, this information is the same as the report date required for the out-of-home care data file.

Child record number. In paragraph (a)(3), we propose that the State report the child's record number, which is a unique person identification number, as an encrypted number. Similar to the instructions for the record number element in the out-of-home care file, the State must apply and retain the same encryption routine or method for the person identification number across all report periods. The State's encryption methodology must meet any ACF standards that we prescribe through technical bulletins or policy. This will allow the Department to track the amount of subsidy changes over time. In addition, this information will help predict future changes based upon the age distribution of the population and the age distribution of those entering each year.

Section 1355.44(b) Child demographics

In paragraph (b), we propose that States collect and report demographic information on the child, including the child's date of birth, race and ethnicity.

Date of birth. We propose in paragraph (b)(1), that the State report the child's date of birth. This is basic demographic information which is mandated by section 479(c)(3)(A) of the Act. In addition, this information is needed to determine at what age children are being adopted. Since most children continue to receive a title IV–E adoption subsidy until the age of 18, the information will assist States and the Federal government in conducting budget projections and program planning.

Race data elements. In paragraphs (b)(2)(i) through (b)(2)(viii), we propose that the State report information on the race of the child. As discussed in earlier elements related to race, the racial categories here are consistent with the OMB standards for collecting information on race. The State is to allow the parent(s) or the child, if appropriate, to determine the child's race.

If the child's race is unknown, the State is to so indicate, as outlined in subparagraph (b)(2)(vi). It is acceptable for the child to be identified with more than one race, but not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. If the child has been abandoned the State is to indicate that the race cannot be determined in subparagraph (b)(2)(vii). Finally, if the parent(s) or the child, if appropriate, declines to identify the child's race, the State must indicate that this information was declined as outlined in paragraph (b)(2)(viii).

Hispanic or Latino ethnicity. We propose in paragraph (b)(3), that the State report the Hispanic or Latino ethnicity of the child. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, the State may report whether the child's ethnicity is unknown or whether the parent(s) or child, if appropriate, has declined to provide this information.

Section 1355.44(c) Adoption Agreement Information

In paragraph (c), we propose that the State collect and report information on the nature of adoption assistance agreements and additional information surrounding those adoption arrangements. We are seeking this information for all children who are the subject of an adoption assistance agreement, whether final or not and regardless of whether the agreement is for an ongoing subsidy, nonrecurring costs, services and/or health insurance or Medicaid. For children who are the subject of a guardianship agreement rather than an adoption assistance agreement, the State is to leave the elements described in this paragraph blank.

Adoption assistance agreement type. In paragraph (c)(1), we propose that the State indicate whether the child is in an adoptive placement or finalized adoption pursuant to either a title IV–E adoption assistance agreement (as set forth in section 473(a)(1)(A) of the Act and 45 CFR 1356.40(b)) or a State adoption assistance agreement during the current report period. Collecting this

point-in-time information will provide the Department with current information on this rapidly growing population of children. This will assist the Department in responding to questions raised by the Congress and States on these children. In addition, the information will assist the Federal government and States in planning and budgeting for the adoption assistance program under section 473 of the Act. Collecting data on children for whom there is either a Federal or State agreement for adoption assistance is consistent with the mandate in section 479(c)(3)(D) of the Act to gather information on the nature of adoption assistance.

We want to be clear that we propose States to report information on the child for whom the State agency has a signed adoption assistance agreement in effect with the adoptive or prospective parents. Also, as long as an adoption assistance agreement is in effect between the State and the adoptive or prospective parents at the end of subsequent report periods, the State is to continue to report information on the child. For example, State X has an adoption assistance agreement for a child who is residing with his adoptive parents in State X. Two years later the family moves to State Y and the adoption assistance agreement remains in effect. State X must continue to report information on the child. Another example is a child who is the subject of an adoption assistance agreement who is in out-of-home care temporarily. Regardless of the fact that the child is not currently at home with the adoptive parents, the State must continue reporting information on this child as long as the agreement remains in effect.

Adoption subsidy amount. In paragraph (c)(2), we propose that the State provide the per diem amount of an adoption subsidy payment, if any, made to the adoptive parents on behalf of the child during the last month of the report period. This is a revised element. Currently we require States to report the monthly subsidy amount at one time after the finalization of the adoption. We propose here that States report this information each report period beginning when the adoption assistance agreement becomes effective and continuing for the duration of the agreement. We believe that information will be useful for States and the Federal government for budgetary planning and projection purposes. Further, this information is consistent with section 479(c)(3)(D) of the Act, which requires us to collect information on the extent of assistance provided by Federal, State and local adoption programs.

We propose that a State report the total amount of the subsidy payment made to the adoptive parent(s), rather than the portion that the State may seek reimbursement for under title IV–E. Further, in any situation where the State has an adoption assistance agreement with adoptive parents but is not providing an actual payment in the last month of the report period, the State is to indicate that $0 payment was made. Such a situation is likely to occur if the adoption assistance agreement is for a ''deferred subsidy,'' which States may enter into with prospective parents of a child who may be at risk for developing a health condition (e.g., a child born to a substance-addicted mother) at a later point, but is not exhibiting current signs that warrant a financial payment in addition to the provision of Medicaid. By collecting information on those agreements where a payment is not made, we can determine the extent to which States are providing ancillary services to adopted children.

Nonrecurring adoption expenses elements. In paragraph (c)(3), we propose that States report whether the State paid nonrecurring adoption expenses to the adoptive parent(s) under the title IV–E program. Nonrecurring adoption expenses are reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs (section 473(a)(6) of the Act and 45 CFR 1356.41). States are to report if the State paid nonrecurring expenses during any point in the current report period.

In paragraph (c)(4), we propose that States report the amount of the nonrecurring costs paid to the adoptive parent. This includes payments the State agency makes directly to other service providers rather than to the adoptive parent. The State is to report an amount only if it responded that the adoptive parent received reimbursement for nonrecurring costs during the current report period in the previous element. If the State indicated that the adoptive parent did not receive any nonrecurring costs, then the State must leave this element blank.

We seek information on nonrecurring cost reimbursements consistent with the requirement in section 479(c)(3)(D) of the Act to collect information on the extent of adoption assistance. We have chosen to solicit information on the payment or reimbursement of nonrecurring adoption expenses under the Federal adoption assistance program only, as we are not aware of separate State-only funded programs which offer this benefit to adoptive families. We also ask that the State report the total amount of the reimbursement during the report period. Unlike adoption subsidy payments which are ongoing and may fluctuate over time, reimbursements for nonrecurring costs are more likely to be made in a lump-sum or over a finite period of time. Thus, we need to gather the total cost of the reimbursements over an extended time rather than in a single month.

Adoption finalization data elements. In paragraph (c)(5), we propose that the State report whether the child who is the subject of an adoption assistance agreement has had his or her adoption finalized. In paragraph (c)(6), we request the date that the child's adoption was finalized, if applicable. We are requesting this information to track the number of children who are receiving adoption assistance and for whom adoption has been achieved. This information also will allow us to analyze the extent to which States are putting adoption supports in place prior to the child's finalized adoption.

Interstate and intercountry adoption. In paragraph (c)(7), we propose that the State identify whether the child has been placed out of State or within State, or was the subject of an incoming or outgoing intercountry adoption. Outgoing intercountry adoptions are those that involve a child who is immigrating to another country for the purposes of adoption.

This is an expansion of the existing AFCARS requirement for the State to indicate whether a child was placed across State lines or was the subject of an incoming intercountry adoption. We wanted to include State reporting of outgoing intercountry adoptions for the first time because we have learned that they do occur and are sometimes subsidized by the State agency. Further, we expect that more outgoing intercountry adoptions may occur after the Hague Convention protections are in full force and effect for children for whom an outgoing adoption may be in their best interests.

Interjurisdictional adoption location. In paragraph (c)(8), we require for the first time that the State identify the FIPS code of the State from which or into which the child was placed for adoption, or the country from which or into which the child was placed. This element in combination with the previous element on intercountry and interstate adoption will provide information on the extent to which States are maximizing all potential adoptive resources for waiting children and will assist the Department in responding to questions and concerns regarding interjurisdictional placement issues.

Adoption placing agency or individual. In paragraph (c)(9), we propose that the State provide information on the entity or individuals that placed the child for adoption. This data element is required in the existing AFCARS; however, we have expanded the response options to be more specific.

We have added a new response option of ''State agency'' which is the title IV–B/IV–E agency that has placement and care responsibility of the child in out-of-home care and is reporting the child to AFCARS. This response option is more specific than the existing option of ''public agency,'' which could be any public agency in the State. It is important for us to be specific here primarily because of the Adoption Incentives Program. We must calculate whether States are eligible for financial incentives for completed adoptions based on whether the child was a foster care child and in the placement and care responsibility of the State agency. Similarly, we have added two response options of ''private agency under a contract or agreement'' and ''Tribal agency with agreement'' so that States can indicate when children are in foster care under the State title IV–B/IV–E agency's placement and care responsibility (or shared responsibility) and still receive credit for such a child's adoption for the Adoption Incentives Program. Under the existing AFCARS, States have been confused as to whether these adoptions should be reported as placed by the public agency or the private agency.

The categories ''Tribal agency,'' ''private agency,'' ''birth parent'' and ''independent person'' have been retained from the existing AFCARS with minor modifications to their definitions. The reporting of these adoptions is being retained because it will permit continuity and consistency of our estimates of the total number of adoptions.

One piece of information that we are no longer requiring States to report separately is the adopted child's special needs status. In the current AFCARS we require States to report whether a State has determined that the child has special needs, and the primary factor (the child's race, age, membership in a sibling group or medical condition or disability) in this determination. We have found that this information does not lend itself to meaningful analysis nor does it represent the Federal definition of special needs, which is comprised of three criteria only one of which relates to the child's condition which makes the child difficult to place. We believe that with the changes we propose to strengthen collection of health conditions and identify sibling groups along with data on age and race, we will have sufficient information to analyze the characteristics of the children in the adoption assistance reporting population.

Agreement termination date. In paragraph (c)(10), we propose that States report the date that an adoption assistance agreement was terminated or expired during the report period. This information will allow us to calculate more accurately the extent of adoption assistance by allowing us to generate the total number of children served under subsidy agreements for the report period. Typically, Federal adoption assistance continues until the child is age 18, or age 21, if the State determines the child has a mental or physical disability that warrants the continuation of assistance. However, the State may terminate Federal adoption assistance under two additional circumstances: Where the adoptive parents are no longer legally responsible for the child, or are no longer providing any support to the child. Further, States may terminate State subsidies or assistance according to State law or policies. We are interested, therefore, in receiving data that will assist us in analyzing when agreements end.

Section 1355.44(d) Subsidized Guardianship Information

In paragraph (d), we propose that a State provide information on children who are the subject of a subsidized guardianship agreement with the State title IV–B/IV–E agency. Although we are not mandated to collect this information under section 479 of the Act, we are requiring information on this growing population of children to try and understand the number and types of children for whom subsidized guardianship is the permanent plan. Further, we believe that we have a general responsibility to ensure the well-being of children who are served by State child welfare systems and would be remiss if we did not collect basic information.

Subsidized guardianship agreement type. In paragraph (d)(1), we propose that the State identify whether the guardianship subsidy is being supported with any title IV–E funds, or if the State is using State-only funds for the subsidy payment. Only those States that have an approved demonstration waiver from ACF to operate a subsidized guardianship program may indicate that the guardianship subsidy includes title IV–E funds.

Subsidized guardianship-amount. In paragraph (d)(2), we propose that the State indicate the per diem dollar amount of the guardianship subsidy as of the last month of the reporting period.

Agreement termination date. In paragraph (d)(3), we propose the State indicate the date that the guardianship subsidy agreement expired or was terminated. This information will allow us to generate the total number of children served under guardianship subsidy agreements for the report period.

1355.45 Compliance

In section 1355.45 we propose the types of assessments we will conduct to determine the accuracy of a State's data, the compliance standards, and the manner in which States initially determined to be out of compliance can correct their data. This section also specifies how we propose to implement the statutory mandates of Public Law 108–145.

Public Law 108–145 added section 474(f) to the Social Security Act, which requires that the Department withhold certain funds from a State that has ''failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 479.'' Although we recognize that the provisions related to AFCARS in section 479 were designed to bolster our authority to take financial penalties for noncompliance with AFCARS requirements, we did not believe that the statute on its face was clear enough to implement penalties immediately after its enactment. In ACYF–CB–IM–04–04, issued on February 17, 2004, we notified State agencies that we would not implement the penalty structure in the statute until we published final regulations. Further, because we were in the midst of developing these proposed rules that would change significantly the information that States submit to AFCARS, we did not believe it prudent to implement a new penalty structure for the existing requirements in regulation.

Section 1355.45(a) Files Subject to Compliance

In paragraph (a) we propose that ACF determine whether a State's out-of-home care data file is in compliance with certain file and data quality standards (described further below in paragraphs (c) and (d)). The law requires that we assure that the data submitted to us is reliable and consistent and authorizes us to utilize appropriate requirements and incentives to ensure that the system functions reliably (sections 479(c)(2) and (4) of the Act, respectively). We have chosen to fulfill these

requirements by establishing specific standards for compliance, consistent with our current requirements (see appendix E to part 1355). We do not believe there is a need to change this general approach.

We are not proposing to establish compliance standards for the adoption assistance and guardianship subsidy file. The primary reason is because we are not statutorily mandated to request information on guardianship agreements. As such, we will not apply a penalty here. We do have authority to seek information on governmental assistance for adoption, and our most pressing information needs can be met through the out-of-home care data file. Moreover, the statute outlines a very specific financial penalty for noncompliance with AFCARS regulations, such that the same financial penalty is mandated regardless of whether we define noncompliance as errors within both files or just one.

Although we have not proposed compliance standards and penalties for the adoption assistance and guardianship subsidy file, this information is still important to ACF and the States and we will take other steps to ensure that States submit quality data. In particular, we may target technical assistance efforts to this information and/or develop a data quality utility for the adoption assistance and guardianship subsidy file that will allow a State agency to evaluate the quality of that file before submitting it to ACF.

Section 1355.45(b) Errors

In paragraph (b) we have outlined the types of data errors and how we will assess a State's out-of-home care data file to identify those errors.

Missing data. In paragraph (b)(1), we define missing data as instances when the element is blank or missing when a response is required. The data element descriptions in 45 CFR 1355.43 list the circumstances in which a blank or missing response may be acceptable. For example, the elements regarding second foster parent information should be left blank if the State agency previously indicated that the first foster parent is single. In such cases, the blank response is not missing data.

We want to note that we propose a more specific definition of the term missing data than is used in the existing AFCARS. AFCARS currently uses the term ''missing data'' to refer to both blank responses and invalid responses (discussed below). We chose not to use a similar definition here to avoid the common confusion that only blank data is problematic.

Finally, we want to underscore that States are not permitted to mask the fact that they have not obtained information by mapping it to a valid, but untrue, response option. This practice is not permitted as specified in 45 CFR 1355.42(d), as it provides a misleading and inaccurate account of the characteristics and experiences of the reporting population.

Invalid data. In paragraph (b)(2), we define invalid data as any instance in which the response the State provides does not match one of the valid responses or exceeds the possible range of responses. These types of errors are not new. In the existing AFCARS, invalid data is known as ''out-of-range'' data. For example, if the response options for an element are ''yes,'' ''no'' and ''abandoned,'' a State's response of ''unknown'' is invalid data for that element. In our experience, invalid data errors are easily remedied by State agencies.

Internally inconsistent data. In paragraph (b)(3), we define internally inconsistent data as those elements that fail an internal consistency check that is designed to validate the logical relationships between two or more elements within a record. For example, a response of ''permanency plan not established'' for the element ''permanency plan'' described in 45 CFR 1355.43(f)(1) and a date provided for the element ''date of permanency plan'' described in 45 CFR 1355.43(f)(2) are internally inconsistent data. We will not attempt to determine which of the elements is/are ''likely'' to be at fault, but will identify all elements assessed by the specified internal consistency in error.

These types of errors are not new and there are internal consistency validations in the existing AFCARS. However, we have found that the existing internal consistency checks, while providing an important first step to quality data, were not extensive enough. Unfortunately, there were a number of occasions where a State's data passed all the existing internal consistency checks, but ACF and the State discovered that the data provided an inaccurate and unreliable picture of children in out-of-home care in the State's placement and care responsibility upon further analysis. Based on our experience in reviews and technical assistance, we believe that more internal consistency checks, along with other assessments that will uncover errors, will provide us with more reliable and consistent data that we can publicize and use for our program activities with a higher degree of confidence. We have chosen not to promulgate the internal consistency checks through notice and comment rulemaking so as to provide maximum flexibility to change them as needed. We will, however, notify States officially of the internal consistency checks.

Cross-file error. In paragraph (b)(4), we propose a new type of data error known as cross-file errors. To determine whether cross-file errors occur we propose to conduct a check to evaluate the data file for illogical and/or improbable patterns of recurrent response options across all records, or applicable records. For example, if all children have the same date of birth in the out-of-home care file, this is clearly an error.

Cross-file checks are not a part of the existing AFCARS compliance assessments, but are a part of the Data Quality Utility. We propose to evaluate a State's data file for these types of errors to address some common problems identified in AFCARS assessment reviews. Often these problems are a result of underlying issues in the programming of the State's information system as opposed to data entry errors. We believe that adding cross-file checks will assist States and ACF in improving the quality of AFCARS data. As with the internal consistency checks, we will share with States the specific cross-file checks.

Tardy transactions. In paragraph (b)(5), we define tardy transactions as a State agency's failure to record removal and exit dates within 15 days of those events occurring. Assessing a State's data file for tardy transactions is consistent with the existing AFCARS requirements. We continue to believe that ensuring a State's timely entry of removal and exit dates is a critical element of quality data. There is, perhaps, nothing more basic than knowing which children are in out-of-home care at a given moment.

Section 1355.45(c) File Standards

In paragraph (c), we propose a set of file submission standards for ACF to determine that a State's AFCARS is in compliance. These are minimal standards for timeliness, formatting and quality information that the State must achieve in order for us to process the State's data appropriately.

Timely submission. In paragraph (c)(1), we propose that the State agency submit an out-of-home care data file according to the reporting periods and timeline (*i.e.*, within 15 days of the end of each six-month reporting period) as described in 45 CFR 1355.42(a). This proposal is consistent with the existing AFCARS requirements.

Proper format. In paragraph (c)(2), we propose that a State send us its data file in a format that meets our specifications. At this time we cannot outline the exact transmission method and/or formatting requirements for AFCARS data as explained in the discussion on 45 CFR 1355.42(e). However, in our experience, improperly formatted files have contributed to inefficiencies in our ability to process States' data.

In addition, we propose that the State submit 100 percent error-free data for the basic demographic elements described in 45 CFR 1355.43(a)(1) through (a)(5), 1355.43(b)(1) and (b)(2) for every child in the reporting population. These elements describe the State, Report date, Local agency, Child record number, Family record number, Child's date of birth and Child's gender. The errors that may be applicable to these elements are missing data, invalid data and internally inconsistent data.

We are requiring that States have no errors at all for these seven elements because they contain information that is readily available to the State and is essential to our ability to analyze the data and determine whether the State is in compliance with the remaining data standards. For example, the child's date of birth is information that all States collect on children in out-of-home care and would typically have in their information system. Without the child's date of birth we cannot run some other internal consistency or cross-file checks. Moreover, we cannot, for example, look at the age stratification of children in out-of-home care or determine the mean age of children adopted from out-of-home care. Based on our experience with the existing AFCARS, we have found that problems in these elements are often the result of minor errors that can be rectified easily. We therefore believe that a 100 percent compliance standard for these basic and critical elements is appropriate.

Acceptable cross-file. In paragraph (c)(3), we propose that a State's data file must be free of any cross-file errors to be in compliance with the AFCARS requirements. As stated earlier, we believe that cross-file errors indicate a systemic problem with the State agency's reported data. Thus we cannot be confident that the information is reflective of the State's out-of-home care population. Therefore, we believe it appropriate not to tolerate such errors in the State's out-of-home care data file.

Section 1355.45(d) Data Quality Standards

In paragraph (d), we propose a set of data quality standards for the State to be in compliance with AFCARS requirements. These standards focus on the quality of the data that a State provides to us. The data quality standards relate to missing data, invalid data, internally inconsistent data and tardy transactions. No more than 10 percent of data in a State's out-of-home care data file may have each of these data errors to remain in compliance with the AFCARS. The numerical standard of 10 percent is consistent with the existing AFCARS standards.

We considered decreasing the 'acceptable' amount of errors permitted in the AFCARS data file, for example, to no more than five percent of each data error in order to ensure that we receive better quality data. As noted earlier, a number of public reports and stakeholders have criticized the quality of AFCARS data. Although States and ACF have made great strides in improving the quality of the data over the past few years, we believe there is room for significantly more progress. Decreasing the acceptable threshold for compliance would be one avenue to compel State agencies to continue to work on their data. On the other hand, by increasing the number and breadth of the internal consistency checks and adding cross-file checks to the range of assessments that we perform on State's data, we already are setting a higher bar for compliance. Further, we acknowledge that by adding elements and requiring that the State agency report historical information for certain elements, we are asking States to report more information that will be subject to the compliance assessments, thereby increasing the likelihood of errors. We believe, therefore, that the most appropriate balance is to leave the numeric standard at 10 percent.

Section 1355.45(e) Compliance Determination and Corrected Data

In paragraph (e), we propose our methodology for determining compliance and a State's opportunity to submit corrected data where ACF has initially determined that the State's original submission does not meet the AFCARS standards.

In paragraph (e)(1), we propose that we first determine whether the State agency's out-of-home care data file meets the file standards (*i.e.*, timely submission, proper format, and acceptable cross-file). If the State agency's data file does not meet all the file standards, ACF will so notify the State. As stated earlier in the description of the errors, we believe that if a State's data file cannot meet the file standards the information contained therein is dubious. In particular, if the State does not meet the proper format standard we cannot process the State's data file and determine if the file meets the other standards.

In paragraph (e)(2), we propose to determine whether the State's out-of-home care data file meets the data quality standards, if the file standards already have been satisfied. We will calculate the error rates for each error type (i.e., missing data, invalid data, inconsistent data and tardy transactions) to determine if any one of them exceeds 10 percent. If an error rate exceeds 10 percent ACF will so notify the State.

In paragraph (e)(3), we propose to notify a State that does not meet either the file or data quality standards within 30 days of the report deadline (i.e., by May 15 and November 14). We are required to notify States within this timeframe in accordance with section 474(f)(1) of the Act. We have not, however, regulated the format of this notification, as we would like to explore the possibility of notifying a State automatically upon receipt (or non-receipt) of a State's data file. We anticipate detailing the data quality errors in the notification to aid the State in correcting its data file.

In paragraph (e)(4), we propose procedures for a State agency to submit a corrected data file to ACF if the State's data file initially does not meet the file and data quality standards. If the State agency does not meet the file standards or the data quality standards (with the exception of the standard for tardy transactions, which is discussed below) a State agency will have until the deadline for submitting data for the subsequent report period to make changes to the data and submit the corrected data file to ACF. This timeframe for the State to submit corrected data is mandated by section 474(f)(1) of the Act. However, if a State does not meet the data quality standard related to tardy transactions, the State may not 'correct' these dates. This is because according to the removal transaction date and exit transaction date elements, these dates must be computer-generated to reflect the data entry date and cannot be modified. Because the State is not permitted to change an entered transaction date, but the law requires that a State have another opportunity to submit data that meets the standards, ACF will look towards the State's next regularly submitted out-of-home care data file to determine whether the State has achieved compliance.

For example, a State agency submits an out-of-home care data file for the report period ending March 31 on April 17 (due on April 15). ACF assesses the

file and notifies the State agency that the out-of-home care data has not met the timely submission standard or the data quality standards for missing data and tardy transactions. The State agency must correct the data in this file so that missing data comprises no more than 10 percent of the applicable records and submit this corrected data file on time—by October 15. In addition, the State agency's out-of-home care data file for the report period ending September 30, also submitted on October 15, must have met the data quality standard related to tardy transactions. If all of these conditions are met, and the corrected data file contains no new errors in excess of the standards, ACF can then determine the State's corrected data in compliance with the AFCARS standards.

The State agency need not develop an actual corrective action plan that outlines how the State plans to comply with the data standards, as is required in other program improvement efforts in child welfare (i.e., Child and Family Service Reviews and Title IV–E Eligibility Reviews). We believe that an actual plan is not necessary in this case, as we anticipate that the Federal system will identify the errors that caused the State's data to be in noncompliance. Furthermore, because the period in which a State may submit data is relatively short, we believe that engaging in a process to develop an action plan and seek ACF approval will only reduce the amount of time the State has to make actual improvements that may bring the State into compliance with the standards.

Section 1355.45(f) Noncompliance

In paragraph (f), we propose to determine that a State has not complied with the AFCARS requirements if the State either does not submit an out-of-home care data file or does not submit corrected data that meets the file and data quality standards. This final determination of noncompliance means that ACF will withhold financial penalties as outlined in 45 CFR 1355.46.

Finally, we would like to emphasize that a determination of compliance with AFCARS standards in this NPRM is separate and apart from the CFSRs as implemented in 45 CFR 1355.31 through 1355.37. This is consistent with the law at section 474(f)(2) of the Act. This means that a State's substantial compliance with titles IV–B and IV–E as determined by a CFSR, including the State's rating on the systemic factor related to statewide information systems, has no bearing on whether ACF determines the State in compliance with the AFCARS standards, and vice versa. Further, a State agency that enters into a program improvement plan consistent with the requirements of 45 CFR 1355.35 to make improvements to a State's data and/or reporting of such data to AFCARS does not factor into ACF's determination of compliance with the AFCARS standards.

Section 1355.45(g) Other Assessments

In paragraph (g), we propose that ACF may use other monitoring tools that are not explicitly mentioned in regulation to determine whether the State meets all AFCARS requirements. For example, we may wish to continue to conduct onsite reviews in some format to ensure proper data mapping or provide other technical assistance to ensure valid and quality data. We currently use this approach in AFCARS by conducting onsite assessment reviews of a State's process to submit AFCARS data, including validating that the information in case files is accurately portrayed in the AFCARS submission. Through these assessment reviews we have found that States may be in compliance with the AFCARS data standards, but not in compliance with all the AFCARS requirements. For example, through the aforementioned error checks, which we expect to be conducted automatically upon receipt of the data, we cannot determine whether the State is submitting the entire or the correct reporting population. But through the assessment reviews, we have been able to provide States with technical assistance on how to meet all aspects of the AFCARS requirements. We have often heard from States that the onsite activities are beneficial and provide the State with valuable technical assistance. Therefore, we want to reserve our ability to develop and conduct these and other monitoring activities for AFCARS.

1355.46 Penalties

In section 1355.46 we propose how ACF will assess and take penalties for a State's noncompliance with the AFCARS requirements. The penalty structure we propose is consistent with section 474(f) of the Act. Some commenters to the **Federal Register** notice suggested that we use incentives in lieu of penalties to encourage data quality improvement. Subsequent to the closing of the **Federal Register** comment period, the President signed into law the Adoption Promotion Act of 2003, which requires that the Department take specific fiscal penalties for a State agency's lack of compliance with AFCARS standards. There is no provision in this law for incentives.

Section 1355.46(a) Federal Funds Subject to a Penalty

In paragraph (a), we propose that the pool of funds that are subject to a penalty for noncompliance are the State agency's claims for title IV–E foster care administrative costs for the quarter in which the original out-of-home care data file is due (as opposed to the corrected data file). Such administrative costs are inclusive of claims for training and SACWIS. We believe that this provision is consistent with the statutory language in section 474(f)(2) of the Act. The law requires that the pool of funds subject to the penalty is ''the amount expended by the State for administration of foster care activities under the State plan approved under this part,'' meaning all title IV–E foster care administrative costs. Further, the law specifies that the pool be comprised of a State's claims in the quarter that coincides with the report period deadline (i.e., the first or third quarter of a fiscal year).

Section 1355.46(b) Penalty Amounts

In paragraph (b), we propose specific penalty amounts for noncompliance.

In paragraph (b)(1), we propose to assess a penalty in the amount of a sixth of a percent of the pool of Federal funds subject to a penalty once ACF determines the State agency out of compliance with the AFCARS requirements according to 45 CFR 1355.45(f). Using fiscal year 2004 claims data, we estimate that penalties will range from $601 to $349,020 for a State's noncompliance with the standards in a single report period. In paragraph (b)(2), we propose to assess a penalty in the amount of a fourth of a percent of the pool of funds subject to a penalty, should the State's noncompliance continue in subsequent six-month periods. Using FY 2004 data, we estimate that the penalty for subsequent noncompliance will range from $902 to $523,530 per report period.

These provisions are consistent with section 474(f)(2)(A) and (B) of the Act. The law specifies the amount of each penalty for noncompliance and requires that penalties continue until the State agency is able to meet the standards. Although the calculated penalty amounts are smaller than those in the existing regulation, a penalty that continues until a State's data file complies with the AFCARS standards provides an incentive for State agencies to correct their data in a timely manner. For example, a State that does not comply with the AFCARS requirement after the first period of corrective action may receive a penalty of $30,205. If the

State is still unable to meet the data standards in the next six month period the State will be penalized $45,308 and will continue to receive that penalty amount for each six-month period the State remains out of compliance.

Section 1355.46(c) Penalty Reduction From Grant

In paragraph (c), we propose to take an assessed penalty by reducing the State's title IV–E foster care grant following ACF's determination of noncompliance.

Section 1355.46(d) Interest

In paragraph (d), we propose that a State be liable for applicable interest on the amount of funds we penalize, in accordance with the regulations at 45 CFR 30.13. This proposal to collect interest is consistent with Department-wide regulations and policy on collecting debts owed to the Federal government.

Section 1355.46(e) Appeals

In paragraph (e), we propose to provide the State with an opportunity to appeal a final determination that the State is out of compliance inclusive of accompanying financial penalties to the DHHS Departmental Appeals Board (DAB). Since the law does not require any unique appeal rights or time frames regarding AFCARS requirements, all appeals must follow the DAB regulations in 45 CFR Part 16.

Appendices

We propose to remove all of the appendices because they contain provisions and charts that are being substantively altered or made obsolete by the provisions of this NPRM. Appendix A contains the data element definitions and instructions for the existing foster care file. We propose instead the foster care file at proposed section 1355.43. Appendix B contains the adoption data element definitions and instructions for the existing adoption file. We propose instead that the adoption data element file be deleted and information pertaining to adoption be incorporated into the foster care file. The adoption assistance and guardianship subsidy file is proposed at section 1355.44. Appendix C contains existing technical file submission details. We explained in the discussion of section 1355.42(e) that we propose not to regulate file submission provisions. Appendix D contains the existing foster care and adoption file layout and summary file details. We explained in the discussion on section 1355.42(a) that we are eliminating the summary files and explained in section 1355.42(e) that we are not regulating file layout. Appendix E contains the existing data standards. We propose instead data standards in section 1355.45. Finally, appendix F contains a chart of allotments upon which the existing penalties are based. We propose instead the penalty calculations consistent with section 474(f) of the Act at section 1355.46.

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS

Category	Element	Response options	Section citation
General information	State	FIPS Code	1355.43(a)(1).
	Report date	Date	1355.43(a)(2).
	Local agency	FIPS code	1355.43(a)(3).
	Child record number	Number	1355.43(a)(4).
	Family record number	Number	1355.43(a)(5).
Child information	Child's date of birth	Date	1355.43(b)(1).
	Child's gender	Male Female.	1355.43(b)(2).
	Race—American Indian or Alaska Native.	Yes No.	1355.43(b)(3)(i)[1].
	Race—Asian	Yes No.	1355.43(b)(3)(ii).
	Race—Black or African American	Yes No.	1355.43(b)(3)(iii).
	Race—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(b)(3)(iv).
	Race—White	Yes No.	1355.43(b)(3)(v).
	Race—Unknown	Yes No.	1355.43(b)(3)(vi).
	Race—Abandoned	Yes No.	1355.43(b)(3)(vii).
	Race—Declined	Yes No.	1355.43(b)(3)(viii).
	Child's Hispanic or Latino ethnicity	Yes No. Unknown. Abandoned. Declined.	1355.43(b)(4).
	Child's language	Verbal Pre-verbal. Non-verbal.	1355.43(b)(5).
	Language used	[select all that apply] English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language).	1355.43(b)(5)(i).

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Language preference	English Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language).	1355.43(b)(5)(ii).
	Heath, behavioral or mental health conditions.	Child has a diagnosed condition No exam or assessment conducted. Exam or assessment conducted and indicate no condition. Exam or assessment conducted but results not received.	1355.43(b)(6).
	Mental retardation	Applies Does not apply.	1355.43(b)(6)(i).
	Visually impaired	Applies Does not apply.	1355.43(b)(6)(ii).
	Hearing impaired	Applies Does not apply.	1355.43(b)(6)(iii).
	Physically disabled	Applies Does not apply.	1355.43(b)(6)(iv).
	Anxiety disorder	Applies Does not apply.	1355.43(b)(6)(v).
	Childhood disorders	Applies Does not apply.	1355.43(b)(6)(vi).
	Learning disability	Applies Does not apply.	1355.43(b)(6)(vii).
	Substance use related disorder	Applies Does not apply.	1355.43(b)(6)(viii).
	Developmental disability	Applies Does not apply.	1355.43(b)(6)(ix).
	Other mental/emotional disorder	Applies Does not apply.	1355.43(b)(6)(x).
	Other diagnosed condition	Applies Does not apply.	1355.43(b)(6)(xi).
	Current immunizations	Current Not current. Not yet determined.	1355.43(b)(7).
	Educational performance—Repeated grades.	Repeated grade No repeated grades. Not school age.	1355.43(b)(8)(i).
	Educational performance—Number of repeated grades.	Number	1355.43(b)(8)(ii).
	Special education	Special education No special education. Not yet determined.	1355.43(b)(9).
	Prior adoption	Prior adoption No prior adoption abandoned.	1355.43(b)(10).
	Prior adoption date	Date	1355.43(b)(10)(i).
	Prior adoption type	Foster care adoption within State Foster care adoption in another State. Intercountry adoption. Other private or independent adoption.	1355.43(b)(10)(ii).
	Prior adoption location	FIPS code	1355.43(b)(10)(iii).
	Number of siblings living with the child at removal.	Number	1355.43(b)(11).
	Minor parent	Number	1355.43(b)(12).
	Child financial and medical assistance	[select all that apply] SSI or other Social Security Act benefits. Title XIX Medicaid. Title XXI SCHIP. State adoption assistance. State foster care payment. Child support. Other source of financial support. No support/assistance received.	1355.43(b)(13).
	Title IV–E foster care during report period.	Yes No	1355.43(b)(14).

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
Parent or legal guardian information	Year of birth of first parent or legal guardian.	Year Abandoned.	1355.43(c)(1).
	Year of birth of second parent or legal guardian.	Year Abandoned.	1355.43(c)(2).
	Mother married at time of the child's birth.	Married Unmarried. Abandoned. Unknown.	1355.43(c)(3).
	Termination of parental rights petition—first parent.	Date	1355.43(c)(4).
	Termination of parental rights—second parent.	Date	1355.43(c)(5).
	Termination of parental rights petition—second parent.	Date	1355.43(c)(6).
	Termination of parental rights—second parent.	Date	1355.43(c)(7).
Removal information	Date of child's removal	Date(s)	1355.43(d)(1).
	Removal transaction date	Date(s)	1355.43(d)(2).
	Environment at removal	Household Other environment or facility. Abandoned.	1355.43(d)(3).
	Household composition at removal—Biological parent.	Number	1355.43(d)(4)(i).
	Household composition at removal—Adoptive parent.	Number	1355.43(d)(4)(ii).
	Household composition at removal—Stepparent.	Number	1355.43(d)(4)(iii).
	Household composition at removal—Legal guardian.	Number	1355.43(d)(4)(iv).
	Household composition at removal—Maternal grandparent.	Number	1355.43(d)(4)(v).
	Household composition at removal—Paternal grandparent.	Number	1355.43(d)(4)(vi).
	Household composition at removal—Other maternal relative.	Number	1355.43(d)(4)(vii).
	Household composition at removal—Other paternal relative.	Number	1355.43(d)(4)(viii).
	Household composition at removal—Adult sibling.	Number	1355.43(d)(4)(ix).
	Household composition at removal—Parent's or caretaker's paramour.	Number	1355.43(d)(4)(x).
	Household composition at removal—Other non-relative caretaker.	Number	1355.43(d)(4)(xi).
	Biological parents' marital status	Married and living together Married and living separately. Unmarried and living together. Unmarried and living separately.	1355.43(d)(5).
	Manner of removal	Court ordered removal Voluntary placement agreement. Not yet determined.	1355.43(d)(6).
	Child and family circumstances at removal.	[select all that apply]. Child status offender. Child delinquency. Runaway. Physical abuse. Sexual abuse. Psychological or emotional abuse. Neglect. Medical neglect. Domestic violence. Abandonment. Failure to provide supervision. Failure to return. Caretaker's alcohol abuse. Caretaker's drug abuse. Child alcohol use. Child drug use. Prenatal alcohol exposure. Prenatal drug exposure. Diagnosed condition. Inadequate access to mental health services.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	
		Incarceration of caretaker.	
		Caretaker's inability to cope.	
		Caretaker's limited mental capacity.	
		Inadequate housing.	
		Disrupted intercountry adoption.	
		Voluntary relinquishment	1355.43(d)(7).
Living arrangement and provider information.	Date of living arrangement	Date	1355.43(e)(1).
	Foster family home	Yes	1355.43(e)(2).
		No.	
	Foster family home type	Licensed home	1355.43(e)(3).
		Therapeutic foster family home.	
		Shelter care foster family home.	
		Relative foster family home.	
		Pre-adoptive home.	
	Other living arrangement type	Group home-family operated	1355.43(e)(4).
		Group home-staff operated.	
		Group home-shelter care.	
		Residential treatment center.	
		Child care institution.	
		Child care institution—shelter care.	
		Supervised independent living.	
		Juvenile justice facility.	
		Medical or rehabilitative facility.	
		Psychiatric facility.	
		Runaway.	
	Private agency living arrangement	Private agency involvement	1355.43(e)(5).
		No private agency involvement.	
		Runaway.	
	Location of living arrangement	Out-of-State	1355.43(e)(6).
		In-state.	
		Out-of-country.	
		Runaway.	
	State or country where child is living	FIPS code	1355.43(e)(7).
	Number of siblings placed together	Number	1355.43(e)(8).
	Number of children living with the minor parent.	Number	1355.43(e)(9).
	Foster parent's marital status	Married couple	1355.43(e)(10).
		Unmarried couple.	
		Separated.	
		Single female.	
		Single male.	
	Foster parent(s) relationship to the child.	Paternal grandparent(s).	
		Maternal grandparent(s).	
		Other paternal relative(s).	
		Other maternal relative(s).	
		Sibling(s).	
		Non-relative(s)	1355.43(e)(11).
	Year of birth for first foster parent	Year	1355.43(e)(12).
	Race of first foster parent—American Indian or Alaska Native.	Yes	1355.43(e)(13)(i).
		No.	
	Race of first foster parent—Asian	Yes	1355.43(e)(13)(ii).
		No.	
	Race of first foster parent—Black or African American.	Yes	1355.43(e)(13)(iii).
		No.	
	Race of first foster parent—Native Hawaiian or other Pacific Islander.	Yes	1355.43(e)(13)(iv).
		No.	
	Race of first foster parent—White	Yes	1355.43(e)(13)(v).
		No.	
	Race of first foster parent—Unknown	Yes	1355.43(e)(13)(vi).
		No.	
	Race of first foster parent—Declined	Yes	1355.43(e)(13)(vii).
		No.	
	Hispanic or Latino ethnicity of first foster parent.	Yes	1355.43(e)(14).
		No.	
		Unknown.	
		Declined.	
	Languages used by first foster parent	[select all that apply].	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
		English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____(specific other language)	1355.43(e)(15)(i).
	Language preference for first foster parent.	English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language)	1355.43(e)(15)(ii).
	Year of birth for second foster parent	Year	1355.43(e)(16).
	Race of second foster parent—American Indian or Alaska Native.	Applies Does not apply.	1355.43(e)(17)(i).
	Race of second foster parent—Asian	Yes No.	1355.43(e)(17)(ii).
	Race of second foster parent—Black or African American.	Yes No.	1355.43(e)(17)(iii).
	Race of second foster parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(e)(17)(iv).
	Race of second foster parent—White	Yes No.	1355.43(e)(17)(v).
	Race of second foster parent—Unknown.	Yes No.	1355.43(e)(17)(vi).
	Race of second foster parent—Declined.	Yes No.	1355.43(e)(17)(vii).
	Hispanic or Latino ethnicity of second foster parent.	Yes No. Unknown. Declined.	1355.43(e)(18).
	Languages used by second foster parent.	[select all that apply] English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language).	1355.43(e)(19)(i).
	Language preference for second foster parent.	English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language)	1355.43(e)(19)(ii).
	Sources of Federal assistance in living arrangement.	[select all that apply]. Title IV–E foster care. Title IV–E adoption subsidy. Title IV–A TANF. Title IV–B. Title XX SSBG Other federal source. No federal source.	1355.43(e)(20).
	Amount of payment	Dollar amount	1355.43(e)(21).
Permanency plan information and ongoing circumstances.	Permanency plan	Reunify with parents or legal guardians. Live with other relatives. Adoption. Planned permanent living arrangement. Independent living. Relative guardianship. Non-relative guardianship. Permanency plan not established.	1355.43(f)(1).

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Date of permanency plan	Date	1355.43(f)(2).
	Concurrent planning	Concurrent plan	1355.43(f)(3).
		No concurrent plan.	
		Not applicable.	
	Concurrent permanency plan	Live with other relatives	1355.43(f)(3)(i).
		Adoption.	
		Planned permanent living arrangement.	
		Independent living.	
		Relative guardianship.	
		Non-relative guardianship.	
	Date of concurrent plan	Date	1355.43(f)(3)(ii).
	Date of periodic review or permanency hearing.	Date	1355.43(f)(4).
	Juvenile justice involvement	Not involved	1355.43(f)(5).
		Alleged status offender.	
		Status offender.	
		Alleged juvenile delinquent.	
		Adjudicated delinquent.	
	Circumstances at initial permanency plan.	[select all that apply].	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	
		Incarceration of caretaker.	
		Caretaker's inability to cope.	
		Caretaker's limited mental capacity.	
		Inadequate housing.	
		Disrupted intercountry adoption.	
		Voluntary relinquishment.	
		None of the above	1355.43(f)(6).
	Annual circumstances	[select all that apply].	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
		Incarceration of caretaker.	
		Caretaker's inability to cope.	
		Caretaker's limited mental capacity.	
		Inadequate housing.	
		Disrupted intercountry adoption.	
		Voluntary relinquishment.	
		None of the above	1355.43(f)(7).
	Annual circumstances date	Date	1355.43(f)(8).
General exit information	Date of exit	Date	1355.43(g)(1).
	Exit transaction date	Date	1355.43(g)(2).
	Exit reason	Reunify with parents/legal guardian.	
		Live with other relatives.	
		Adoption.	
		Emancipation.	
		Relative guardianship.	
		Non-relative guardianship.	
		Transfer to another agency.	
		Runaway.	
		Death of child	1355.43(g)(3).
	Death due to abuse/neglect in care	Provider responsible	1355.43(g)(4).
		Provider not responsible.	
		Not yet determined.	
	Transfer to another agency	Transfer to another agency.	
		Tribe or tribal agency.	
		Juvenile justice agency.	
		Mental health agency.	
		Other State agency.	
		Private agency	1355.43(g)(5).
	Circumstances at exit from foster care	[select all that apply].	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	
		Incarceration of caretaker.	
		Caretaker's inability to cope.	
		Caretaker's limited mental capacity.	
		Inadequate housing.	
		Disrupted intercountry adoption.	
		Voluntary relinquishment.	
		None of the above	1355.43(g)(6).
Exit to adoption information	Adoptive parent(s) marital status	Married couple	1355.43(h)(1).
		Unmarried couple.	
		Single female.	
		Single male.	
	Adoptive parent(s) relationship to the child.	Paternal grandparent(s)	1355.43(h)(2).
		Maternal grandparent(s).	
		Other paternal relative(s).	
		Other maternal relative(s).	
		Sibling(s).	
		Non-relative(s).	
		Foster parent(s).	
	Date of birth of first adoptive parent	Date	1355.43(h)(3).
	Race of first adoptive parent—American Indian or Alaska Native.	Yes	1355.43(h)(4)(i).
		No.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Race of first adoptive parent—Asian	Yes No.	1355.43(h)(4)(ii).
	Race of first adoptive parent—Black or African American.	Yes No.	1355.43(h)(4)(iii).
	Race of first adoptive parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(h)(4)(iv).
	Race of first adoptive parent—White	Yes No.	1355.43(h)(4)(v).
	Race of first adoptive parent—Unknown.	Yes No.	1355.43(h)(4)(vi).
	Race of first adoptive parent—Declined.	Yes No.	1355.43(h)(4)(vii).
	First adoptive parent's Hispanic or Latino ethnicity.	Yes No. Unknown. Declined.	1355.43(h)(5).
	Date of birth of second adoptive parent.	Date	1355.43(h)(6).
	Race of second adoptive parent—American Indian or Alaska Native.	Yes No.	1355.43(h)(7)(i).
	Race of second adoptive parent—Asian.	Yes No.	1355.43(h)(7)(ii).
	Race of second adoptive parent—Black or African American.	Yes No.	1355.43(h)(7)(iii).
	Race of second adoptive parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(h)(7)(iv).
	Race of second adoptive parent—White.	Yes No.	1355.43(h)(7)(v).
	Race of second adoptive parent—Unknown.	Yes No.	1355.43(h)(7)(vi).
	Race of second adoptive parent—Declined.	Yes No.	1355.43(h)(7)(vii).
	Second Adoptive parent's Hispanic or Latino ethnicity.	Yes No. Unknown. Declined.	1355.43(h)(8).
	Interstate or intercountry adoption	Interstate adoption Intercountry adoption. Intrastate adoption.	1355.43(h)(9).
	Interjurisdictional adoption location	FIPS code	1355.43(h)(10).
	Adoption placing agency or individual	State agency Private agency under a contract/agreement. Tribal agency with agreement.	1355.43(h)(11).

[1] Some citations are not sequential in this table because the table does not include paragraphs which contain instructions rather than data element definitions. For example section 1355.43(b) contains instructions on the data elements related to a child's race in section 1355.43(b)(i) through (b)(viii).

ATTACHMENT B.—PROPOSED ADOPTION ASSISTANCE AND GUARDIANSHIP SUBSIDY DATA FILE ELEMENTS

Category	Element	Response options	Section citation
General Information	State	FIPS Code	1355.44(a)(1).
	Report date	Date	1355.44(a)(2).
	Child record number	Number	1355.44(a)(3).
Child Demographics	Date of birth	Date	1355.44(b)(1).
	Race—American Indian or Alaska Native.	Yes No.	1355.44(b)(2)(i).
	Race—Asian	Yes No.	1355.44(b)(2)(ii).
	Race—Black or African American	Yes No.	1355.44(b)(2)(iii).
	Race—Native Hawaiian or other Pacific Islander.	Yes No.	1355.44(b)(2)(iv).
	Race—White	Yes No.	1355.44(b)(2)(v).
	Race—Unknown	Yes No.	1355.44(b)(2)(vi).
	Race—Abandoned	Yes No.	1355.44(b)(2)(vii).

ATTACHMENT B.—PROPOSED ADOPTION ASSISTANCE AND GUARDIANSHIP SUBSIDY DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Race—Declined	Yes No.	1355.44(b)(2)(viii).
	Hispanic or Latino ethnicity	Yes No. Unknown. Abandoned. Declined.	1355.44(b)(3).
Adoption assistance agreement information.	Adoption assistance agreement type	Title IV–E agreement State agreement.	1355.44(c)(1).
	Adoption subsidy amount	Dollar amount	1355.44(c)(2).
	Nonrecurring adoption expenses	Expenses paid No expenses paid.	1355.44(c)(3).
	Nonrecurring adoption expenses amount.	Dollar amount	1355.44(c)(4).
	Final adoption	Adoption final Adoption not final.	1355.44(c)(5).
	Adoption finalization date	Date	1355.44(c)(6).
	Interstate and intercountry adoption	Interstate adoption Intrastate adoption. Intercountry adoption—incoming. Intercountry adoption—outgoing.	1355.44(c)(7).
	Interjurisdictional adoption location	FIPS code	1355.44(c)(8).
	Adoption placing agency or individual	State agency Private agency under a contract/agreement. Tribal agency with agreement. Tribal agency. Private agency. Birth parent. Independent person.	1355.44(c)(9).
	Agreement termination date	Date	1355.44(c)(10).
Subsidized guardianship information	Subsidized guardianship agreement type.	Title IV–E guardianship State guardianship.	1355.44(d)(1).
	Subsidized guardianship amount	Dollar amount	1355.44(d)(2).
	Agreement termination date	Date	1355.44(d)(3).

V. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. In particular, we have determined that a regulation is the best and most cost-effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and support other statutory obligations to provide oversight of State-operated child welfare programs. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the costs to the States as a result of this rule will not be significant. At least half of the costs that States incur as a result of the revisions to AFCARS will be eligible for Federal financial participation. Depending on the cost category and each State's approved plans for title IV–E and cost allocation, States may claim allowable costs as Statewide Automated Child Welfare Information System costs at the 50% rate, administrative costs for the proper and efficient administration of the State plan at the 50% rate, or training of State-agency staff at the 75% rate. We estimate that States costs will be approximately $36 million annually for AFCARS for the first five years of implementation, half of which ($18 million) we estimate will be reimbursed by the Federal government as allowable costs under title IV–E. Additional costs to the Federal government to design a system to collect the new AFCARS data are expected to be minimal.

Alternatives Considered

We considered whether alternative approaches could meet ACF and State needs but determined that they could not. First, we considered whether other existing data sets could yield similar information. We determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption with the involvement of the State child welfare agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate. We also considered whether we should permit States to sample and report information on a representative population of children. We determined that there are several significant problems with using a sampling approach for collecting data on foster care and adoption. First, sampling would severely limit the use of AFCARS data. For example, ACF would be unable to collect reliable sample data for the title IV–E foster care eligibility reviews and the Child and Family Services Reviews or respond to other initiatives such as the Annual Outcomes Report to Congress and Adoption Incentives using sampling data. Second, when using a sample, small population subgroups (e.g. children who spend very long periods in foster care or children who get adopted or run away) would occur so rarely in the data such that analysis on these subgroups would not be meaningful.

Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to State agencies that administer title IV–B and IV–E of the Act.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104–13), all Departments are required to submit to OMB for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This NPRM contains information collection requirements in sections 1355.43, the foster care data file and 1355.44, the adoption assistance and guardianship subsidy data file, that the Department has submitted to OMB for its review. In addition, the NPRM proposes to validate whether the State complies with the AFCARS out-of-home care standards established in section 1355.45 by checking for errors in logic that mean that the data could not be accurate. However, these error checks are not information collection requirements themselves as they do not require the State to produce, maintain or submit information to ACF, and so are not a part of the burden calculations. Rather, the error checks will be performed by ACF on each State's out-of-home care data file to validate that the State is providing the data as specified in the data file requirements in section 1355.43. The error checks are not appended to this regulation as they are rather technical aspects of data reporting that cannot be completed until ACF issues a final rule that contains the required data elements.

Collection of information for AFCARS is currently authorized under OMB number 0980–0267. However, this NPRM significantly changes the collection requirements. We estimate that burden hours will increase to 673,234 as a result of the provisions in this NPRM. The respondents to the information collection in this proposed rule are State agencies.

The Department requires this collection of information to address the data collection requirements of section 479 of the Act. Specifically, the law requires the Department to develop a data collection system that can provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents; the status of the foster care population; the number and characteristics of children placed in or removed from foster care; children adopted or with respect to whom adoptions have been terminated, and children placed in foster care outside the State which has placement and care responsibility; and the extent and nature of assistance provided by government adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

Further, this information is critical to our efforts to: assess a State's compliance with titles IV–B and IV–E of the Act and the CFSRs (45 CFR 1355.31 through 1355.37), conduct title IV–E eligibility reviews (45 CFR 1356.71), implement the Adoption Incentive Payments program at section 473A of the Act and for other program purposes previously outlined.

The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
1355.43 Foster care data file	52	2	5556	577,776
1355.44 Adoption assistance and guardianship subsidy data file	52	2	918	95,458
Total				673,234

* Average burden hours per respondent are rounded.

We arrive at these estimates after taking into consideration the existing foster care, adoption assistance and guardianship subsidy populations; factoring in the increase of burden in accordance with this proposed rule and efficiencies in reporting; and the amount of caseworker and information system staff time to collect and report the information. PRA rules require that we estimate the total burden created by this NPRM regardless of what information is already available to States. Thus, these burden hours are substantially higher than currently authorized by OMB, and may be an overestimate since we are unable to account for information that States currently collect for their own purposes, but we propose to collect for the first time under this NPRM. Below we describe in detail how we arrived at the estimated burden.

Foster Care Data File Burden

1. Our first step was to estimate the foster care reporting population at the approximate time of implementation. We used information from FY 2003 AFCARS data and applied the following assumptions:

• We assume that the proportion of children in SACWIS States versus non-SACWIS States will remain constant.

• Children newly entering foster care annually. We assume that the national number of children who enter foster care each year will rise by five percent due to our new reporting population (e.g., inclusive of some children in the State's placement and care responsibility who are in living arrangements outside of the scope of our program rules for foster care). Although we do not know exactly how many children will be a part of the new reporting population who are not currently reported as in foster care under the existing AFCARS, we believe this new reporting population will account for a minor increase in the number of children in foster care.

• Children served annually. We assume that the number of children served annually in foster care will rise by five percent due to our new reporting population.

• Children exiting foster care. We assume that the number of children who exit foster care annually will remain about the same as it is currently, in part because we have made a change in the way States report exits from foster care

(i.e., by no longer requiring the State to report certain children who are returned home without a court discharge of the State agency's placement and care responsibility as still in foster care), and we believe that any increase in foster care exits that may have occurred due to the change in the foster care reporting population will be offset by the changes to how States report exits.

As a result we estimate 503,848 children served in SACWIS States and 75,288 in non-SACWIS States; 264,971 children with new entries into foster care in SACWIS States, and 46,760 in non-SACWIS States; and 278,068 children who exit foster care, approximately 49,000 of whom would exit to adoption.

2. Our second step was to estimate the number of recordkeeping hours that State workers will spend on meeting AFCARS requirements. We used information from our existing AFCARS collection approved by OMB as a foundation and applied the following assumptions:

- Recordkeeping will require more time in a non-SACWIS State than it does for a SACWIS State.
- Entering information into an information system for a child newly entering foster care will take approximately an hour for SACWIS States and 1.5 hours for non-SACWIS States.
- Updating the foster care record on average will take 20 minutes for SACWIS States and 30 minutes for non-SACWIS States.
- Workers will take approximately .1 hour to enter exit data for non-adoption cases and an additional 30 minutes for adoption cases.

We multiplied the time spent on the various recordkeeping activities as outlined in this step by the foster care caseload numbers described above in step 1, and arrived at a total of 576,216 recordkeeping hours for all children in the foster care population annually.

3. Our third step was to estimate the time spent on actually reporting the information (e.g., submitting the foster care file). We used the following assumptions to develop the reporting hours estimate:

- We anticipate that States will be using a new technology such as XML to transmit the data and States will need time to become familiar with and efficient in reporting their data in the first years of implementing the new procedures. This will increase the amount of time spent reporting.
- The proposed foster care data file is comprised of many elements of the existing foster care and adoption files. Therefore, our estimate should be higher than the sum of the existing reporting burden hours of eight hours for the foster care file and four hours for the adoption file.

We estimate that the proposed foster care file will increase the reporting burden by approximately 25 percent or by 3 hours, for a total of 15 hours. We then multiplied 52 State agencies and two report periods with the 15 reporting burden hours, which results in an annual reporting burden of 1,560 hours.

4. Finally, we calculated the total burden hours for the foster care file as 577,776 hours by combining the recordkeeping (576,216) and reporting burden (1,560). Dividing this national and annual figure by the 52 State agencies and two semi-annual report periods, we arrive at approximately 5,556 burden hours per respondent each report period.

Adoption Assistance and Guardianship Subsidy File

1. We first estimated the annual burden associated with the adoption assistance elements.

- In the Department's FY 2006 budget, we estimated that an average monthly total of 369,000 children will be served in that year by the title IV–E adoption assistance program. Approximately 80% of all children receiving adoption assistance are served by the title IV–E program, so we estimate that in FY 2006 approximately 461,250 children will be the subject of an adoption assistance agreement.
- We expect adoption workers to spend .2 hours annually recording data in accordance with this NPRM on each child under an adoption assistance agreement. Most information in the adoption file is demographic and static and does not need to be updated. Further, most agreements are updated or changed on an annual or biennial basis, unless the family circumstances change, requiring small amounts of record-keeping.
- We calculate recordkeeping for adoption assistance information to take approximately 92,250 hours (.2 hours x 461,250 children).

2. We then estimated the annual burden associated with the guardianship subsidy elements.

- We estimate that the guardianship reporting population is comprised of approximately 30,000 children based on information obtained from a number of sources describing States subsidized guardianship programs.
- Like the adoption data, this information is static and will change infrequently, so we estimate worker time of approximately .1 hours annually on record keeping.
- We calculate recordkeeping for the guardianship subsidy information to take approximately 3,000 burden hours (.1 hours x 30,000 children).

3. In addition, we estimate that burden associated with actually reporting the adoption assistance and guardianship subsidy file to ACF will take each State 2 hours each report period. We then multiplied 52 State agencies and two report periods with the 2 reporting burden hours, which results in an annual reporting burden of 208 hours.

4. Finally, we calculated the total burden hours for the adoption assistance and guardianship subsidy file as 95,458 hours by combining the recordkeeping (92,250 + 3,000) and reporting burden (208). Dividing this national total by the 52 State agencies and two report periods we arrive at approximately 918 burden hours per respondent per report period.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

1. Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

2. Evaluating the accuracy of ACF's estimate of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhancing the quality, usefulness, and clarity of the information to be collected; and

4. Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by e-mail to *OIRA_submission@omb.eop.gov*. Please mark faxes and e-mails to the attention of the desk officer for ACF.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

Assessment of Federal Regulations on Policies and Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. These proposed regulations will have an impact on family well-being as defined in the legislation by collecting information on children who are in foster care, are subject to an adoption assistance agreement or are the beneficiaries of guardianship subsidies. We expect that States will be able to use this data to analyze factors that may affect the safety of children, permanency for children, and children's well-being. This information could lead to improvements in practice and policy to better serve children who are in foster care.

Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: June 1, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: September 13, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on December 18, 2007.

For the reasons set forth in the preamble we propose to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 45 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.,* 42 U.S.C. 1302.

2. Revise § 1355.40 to read as follows:

§ 1355.40 Scope of the adoption and foster care analysis and reporting system.

(a) This section applies to a State agency that administers titles IV–B and IV–E of the Social Security Act.

(b) A State agency described in paragraph (a) of this section must collect information on the characteristics and experiences of children in the reporting populations described in § 1355.41 of this part. The State agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption assistance and guardianship subsidy data file as required in section CFR 1355.42 of this part, pertaining to information described in §§ 1355.43 and 1355.44 of this part.

(c) As used for AFCARS, the term ''out-of-home care'' means any child under the title IV–B/IV–E State agency's responsibility for placement and care who is away from his/her parents or legal guardians for 24 hours or more regardless of the child's living arrangement, and who has not yet reached the State's age of majority.

3. Add §§ 1355.41 through 1355.46 to read as follows:

§ 1355.41 Reporting populations.

(a) Out-of-home care reporting population.

(1) In general, the State agency must report any child who is in out-of-home care consistent with 1355.40(c). The reporting population also includes a child in the following situations:

(i) A child under the placement and care responsibility of another public agency with which the title IV–B/IV–E State agency has an agreement pursuant to section 472(a)(2) of the Social Security Act and on whose behalf the State agency makes title IV–E foster care maintenance payments.

(ii) A youth for whom the State agency makes a title IV–E foster care maintenance payment even if the youth has reached the State's age of majority.

(iii) A child in out-of-home care who is placed in a non-traditional foster care setting such as in a detention facility, hospital, or jail.

(iv) A child who is in out-of-home care but is not in a physical living arrangement because the child is missing or has run away; attending a camp, vacationing; or visiting with parents, relatives, caretakers or other persons.

(2) A child remains in the out-of-home care reporting population until the State agency's placement and care responsibility ends, the child returns to his or her parent(s) or legal guardian(s), or the child reaches the State's age of majority and is not receiving title IV–E foster care maintenance payments. For AFCARS purposes, the period between a child's entry into and exit from out-of-home care reporting population is an out-of-home care episode.

(b) Adoption assistance and guardianship subsidy reporting population. The State agency must report all children who are:

(1) In an adoptive or pre-adoptive placement pursuant to a title IV–E adoption assistance agreement or a State adoption assistance agreement with the State agency that is or was in effect at some point during the current report period; or

(2) Receiving or had received a subsidy pursuant to a guardianship agreement with the State agency at some point during the current report period.

§ 1355.42 Data reporting requirements.

(a) *Report periods and deadlines.* There are two six-month report periods based on the Federal fiscal year; October 1 to March 31 and April 1 to September 30. In general, the State agency must submit the out-of-home care and adoption assistance and guardianship subsidy data files to ACF within 15 days of the end of the report period (*i.e.*, by April 15 and October 15). If the reporting deadline falls on a weekend, the State has until the following Monday to submit the file.

(b) *Out-of-home care data file.* A State agency must report the information required in 45 CFR 1355.43 of this part pertaining to every child in the out-of-home care reporting population, in accordance with the following:

(1) The State agency must report the most recent information for the applicable elements in 45 CFR 1355.43(a), (b) and (c) of this part.

(2) Except as provided in paragraph (b)(3), the State agency must report the most recent information and all historical information for the applicable elements described in 45 CFR 1355.43(d), (e), (f), (g), and (h) of this part. This means that the State must report the information for the specified elements, about the child's entire experience in out-of-home care including the information about all of the child's out-of-home care episodes, unless paragraph (b)(3) applies for an out-of-home care episode.

(3) For a child who had an out-of-home care episode(s) as defined in 45 CFR 1355.41(a) of this part prior to the effective date of this final rule, the State agency must report the information for the elements described in 45 CFR 1355.43(d)(1), (g)(1), and (g)(3) of this part for the out-of-home care episode(s) that occurred prior to the effective date of the final rule.

(c) *Adoption assistance and guardianship subsidy data file.* A State agency must report the most recent information for the applicable elements in 45 CFR 1355.44 of this part that pertains to every child in the adoption assistance and guardianship subsidy reporting population during the report period.

(d) *Reporting missing information.* If the State agency fails to collect the information for an element, the State agency must report the element as blank or otherwise missing. The State agency is not permitted to default or map information that was not collected and is missing to a valid response option.

(e) *Electronic submission.* The State agency must submit the required data files electronically according to ACF's specifications.

(f) *Record retention.* The State agency must retain all records necessary to comply with the data requirements in 1355.42 through 1355.44 of this part. Record retention rules in 45 CFR 92.42(b) and (c) are not applicable to AFCARS data requirements.

§ 1355.43 Out-of-home care data file elements.

(a) *General information*—(1) *State.* Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds with the end of the current report period. Indicate the last month and the year of the report period.

(3) *Local agency.* The local agency must be the county or a county equivalent unit that has primary responsibility for the child. Indicate the 5-digit Federal Information Processing Standard (FIPS) code for the local agency.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the State agency in out-of-home care and across all report periods and episodes. If the child was previously adopted in the State, however, the State agency may provide a new record number for the child for a subsequent out-of-home care episode. The State agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(5) *Family record number.* Indicate the family record number. This is an encrypted, unique family identification number which associates the child with the rest of the child's family. The family identification number must remain the same for the child's family, no matter where the child or family lives while the child is in the placement and care responsibility of the State agency. If the child's family remains the same, the family number must remain the same across all report periods and episodes. If the child's family changes due to adoption, the State agency must report a new family record number for the adoptive family. The State agency must apply and retain the same encryption routine or method for the family identification number across all report periods. The family record number must be encrypted in accordance with ACF standards.

(b) *Child information*—(1) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' A date of birth that results in a child age of 22 years or more is an invalid response.

(2) *Child's gender.* Indicate whether the child is ''male'' or ''female,'' as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child or the child's parent(s). Indicate whether each race category listed in the elements described in paragraphs (b)(3)(i) through (b)(3)(viii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The child or parent does not know the race, or at least one race of the child.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(viii) *Race—declined.* The child or parent has declined to identify a race.

(4) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the parent/child does not know whether the child is of Hispanic or Latino ethnicity, indicate ''unknown.'' If the child is abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' If the child or parent refuses to identify the child's ethnicity, indicate ''declined.''

(5) *Child's language.* Indicate whether the child is verbal, pre-verbal or non-verbal. ''Verbal'' means that the child uses a language. This includes a child who uses sign language, even if he/she does not speak. ''Pre-verbal'' means the child is not old enough to use language. ''Non-verbal'' means the child is of an appropriate age to use language but appears unable or incapable of using language. If the State agency indicates that the child is ''verbal,'' the State agency must complete the element Language used described in paragraph (b)(5)(i) of this section; otherwise leave that element blank.

(i) *Languages used.* For a child who is deemed verbal in the element Child's language described in paragraph (b)(5), indicate all languages used by the child; otherwise leave this element blank. Select all of the following that apply,

and/or indicate which language the child uses if not specified: ''English,'' ''Spanish,'' ''Chinese,'' ''French,'' ''German,'' ''Tagalog,'' or ''Sign Language.''

(ii) *Language preference.* For a child who uses two or more languages as indicated in the element Languages used described in paragraphs (b)(5)(i)), indicate the language with which the child has the greatest facility, or languages, if the child has a similar facility with two or more languages. If the child is not verbal or uses one language only, leave this element blank.

(6) *Health, behavioral or mental health conditions.* Indicate whether the child has been diagnosed by a qualified professional, as defined by the State agency, as having a health, behavioral or mental health condition listed below, prior to or during the child's current out-of-home care episode. Indicate ''child has a diagnosed condition'' if a qualified professional has made such a diagnosis and indicate which of the following conditions listed in the elements described in paragraphs (b)(6)(i) through (b)(6)(xi) of this section apply or do not apply; otherwise leave those elements blank. Indicate ''no exam or assessment conducted'' if a qualified professional has not conducted a medical exam or assessment of the child. Indicate ''exam or assessment conducted and indicate no condition'' if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed below. Indicate ''exam or assessment conducted but results not received'' if a qualified professional has conducted a medical exam or assessment but the agency has not yet received the results of such an exam or assessment.

(i) *Mental retardation.* The child has significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

(ii) *Visually impaired.* The child has a visual impairment that may significantly affect educational performance or development.

(iii) *Hearing impaired.* The child has a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

(iv) *Physically disabled.* The child has a physical condition that adversely affects the child's day-to-day motor functioning, including, but not limited to, cerebral palsy, spina bifida, multiple sclerosis, muscular dystrophy, orthopedic impairments, and other physical disabilities.

(v) *Anxiety disorder.* The child has one or more of the following over a long period of time and to a marked degree: Acute stress disorder, agoraphobia, generalized anxiety disorder, obsessive-compulsive disorder, panic disorder, post-traumatic stress disorder, separation anxiety, social or specific phobia.

(vi) *Childhood disorders.* The child has one or more of the following disorders over a long period of time and to a marked degree: Attention deficit/hyperactivity disorder, conduct disorder or oppositional disorder.

(vii) *Learning disability.* The child has an achievement level on individually administered, standardized tests in reading, mathematics, or written expression that is substantially below that expected for age, schooling, and level of intelligence.

(viii) *Substance use related disorder.* The child has a dependency on alcohol or other drugs (legal or non-legal).

(ix) *Developmental disability.* The child has been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (P.L. 106–402), Section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely, and results in substantial functional limitations in three or more of the following areas of major life activity: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; economic self-sufficiency; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of ''developmental disability,'' do not indicate the individual conditions that form the basis of this diagnosis separately.

(x) *Other mental/emotional disorder.* The child has one or more of the following conditions over a long period of time and to a marked degree: Mood disorders, personality disorders or psychotic disorders.

(xi) *Other diagnosed condition.* The child has a condition other than those described above that requires special medical care. This includes, but is not limited to, conditions such as a chronic illness, children diagnosed as HIV positive or children with AIDS.

(7) *Current immunizations.* Indicate whether the child's immunizations are current and up-to-date as of the end of the report period. Indicate ''current'' if the child's immunizations are current and up-to-date, ''not current'' if the child's immunizations are not up-to-date, or ''not yet determined'' if the child's immunization records have not yet been obtained.

(8) *Educational performance.* Indicate in the elements described in paragraphs (b)(8)(i) and (ii) of this section whether the child has repeated any grade(s) in school, and if so how many.

(i) *Repeated grades.* Indicate ''repeated grade'' if the child has ever repeated any grade in school; ''no repeated grades'' if the child has never repeated any grades, or ''not school age'' if the child is not yet school age. If the State agency responds that the child has repeated grades, then the State agency must complete the element Number of repeated grades described in paragraph (b)(8)(ii) of this section.

(ii) *Number of repeated grades.* If the child has repeated a grade as indicated in the element Repeated grades described in paragraph (b)(8)((i) of this section, indicate the number of grades repeated. If a child has repeated a particular grade multiple times, each time must be counted separately.

(9) *Special education.* Indicate whether the child has received special education instruction during the report period. The term ''special education,'' as defined in 20 U.S.C. 1401(29), means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate ''special education,'' if the child received special education, ''no special education,'' if the child did not receive special education or is not school age, or ''not yet determined'' if the State agency has not established whether the child is receiving special education.

(10) *Prior adoption.* Indicate whether the child has experienced a prior finalized adoption before the current out-of-home care episode, including any public, private or independent adoption in the United States or in another country. Indicate ''prior adoption'' if the child has ever been legally adopted before, ''no prior adoption'' if the child has never been legally adopted, or ''abandoned'' if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe

haven.'' If the child has experienced a prior adoption, the State agency must complete the data elements Prior adoption date and Prior adoption type described in paragraphs (b)(10)(i) and (ii) of this section; otherwise leave those elements blank.

(i) *Prior adoption date.* Indicate the month and year that the prior adoption was finalized if the State agency indicated that the child was adopted previously in the element Prior adoption described in paragraph (b)(10) of this section. In the case of a prior intercountry adoption where the adoptive parents readopted the child in the United States, the State agency must provide the date of the adoption (either the original adoption in the home country or the readoption in the United States) that is considered final in accordance with the laws of the State. If the child was not previously adopted, leave this element blank.

(ii) *Prior adoption type.* Indicate the type of adoption if the State agency indicated that the child was adopted previously in the element Prior adoption described in paragraph (b)(10) of this section. Indicate ''foster care adoption within State'' if the child was in foster care in the reporting State at the time the prior adoption was legalized. Indicate ''foster care adoption in another State'' if the child was in foster care in another State at the time the prior adoption was legalized. Indicate ''intercountry adoption'' if the child's prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate ''other private or independent adoption'' if the child's prior adoption was neither a foster care nor an intercountry adoption as defined above. If the child was not previously adopted, leave this element blank.

(iii) *Prior adoption location.* Indicate the FIPS code for the location, either State or country, in which the child was previously adopted if the State agency indicated that the prior adoption occurred outside of the reporting State in the element Prior adoption type described in paragraph (b)(10)(ii) of this section; otherwise leave blank.

(11) *Number of siblings living with the child at removal.* Indicate the total number of siblings (biological, legal or by marriage) living with the child at the time of removal. Do not include the child who is the subject of this record or adult siblings. Indicate ''0'' if the child did not have any siblings living with him/her at the time of the child's removal.

(12) *Minor parent.* Indicate the number of children of the young person reported to AFCARS. A young person has a child or children if the young person has given birth herself, or fathered any child or children who were born. This refers to biological parenthood. If the young person does not have a child, indicate ''0.'' If the State agency indicates that the young person has at least one child the State agency must complete the element Number of children living with the minor parent described in 45 CFR 1355.43(e)(9) of this part.

(13) *Child financial and medical assistance.* Indicate all that apply at any point during the six-month report period. Indicate ''SSI or other Social Security benefits'' if the child is receiving support under title XVI of the Social Security Act. Indicate ''title XIX Medicaid'' if the child is eligible for and may be receiving assistance under the State's title XIX program for medical assistance, including any benefits through title XIX waivers or demonstration programs. Indicate ''title XXI SCHIP'' if the child is eligible for and receiving assistance under a State's Children's Health Insurance Program (SCHIP) under title XXI of the Social Security Act, including any benefits under title XXI waivers or demonstration programs. Indicate ''State adoption assistance'' if the child is receiving a State adoption subsidy or other adoption assistance. Indicate ''State foster care payment'' if the child is receiving a foster care payment that is solely State-funded. Indicate ''child support'' if child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent. Indicate ''other source of financial support'' if the child is receiving financial support from another source not previously listed. Indicate ''no support/assistance received'' if none of these apply.

(14) *Title IV–E foster care during report period.* Indicate whether a title IV–E foster care maintenance payment was paid on behalf of the child at any point during the report period with a ''yes'' or ''no'' as appropriate. Indicate ''yes'' if the child has met all eligibility requirements of section 472(a) of the Social Security Act and the State agency has claimed, or intends to claim Federal reimbursement for foster care maintenance payments made on the child's behalf during the report period.

(c) *Parent or legal guardian information*—(1) *Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological/legal/adoptive) or legal guardian to the child. A parent or legal guardian younger than 10 years old is not a valid response. If the child was abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(2) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological/legal/adoptive) or legal guardian to the child. A parent or legal guardian younger than 10 years old is not a valid response. If the child was abandoned, indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(3) *Mother married at time of the child's birth.* Indicate whether the child's biological mother was a married person at the time the child was born. Include common law marriage if legal in the State. Indicate ''married'' if the child's mother was married, ''unmarried'' if the child's mother was unmarried, ''abandoned'' if the child was abandoned, or ''unknown,'' if the child was adopted prior to the current out-of-home care episode and the State agency does not have this information. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(4) *Termination of parental rights petition—first parent.* Indicate the month, day and year that a petition to terminate the first biological, legal, and/or putative parent's rights was filed in court, if applicable.

(5) *Termination of parental rights—first parent.* Enter the month, day and year that the court terminated the parental rights of the first biological, legal, and/or putative parent, if applicable. If the first parent is known to be deceased, enter the date of death.

(6) *Termination of parental rights petition—second parent.* Indicate the month, day and year that a petition to terminate the second biological, legal and/or putative parent's rights was filed in court, if applicable.

(7) *Termination of parental rights—second parent.* Enter the month, day and year that the court terminated the parental rights of the second biological, legal, and/or putative parent, if applicable. If the second parent is known to be deceased, enter the date of death.

(d) *Removal information*—(1) *Date of child's removal.* Indicate the date(s) that the child was removed from his or her parents/legal guardians and placed in the placement and care responsibility of

the State agency for each removal. Indicate the month, day and year of each removal.

(2) *Removal transaction date.* Indicate the removal transaction date(s) associated with each date of child's removal. The removal transaction date is a computer-generated, non-modifiable date that indicates the date the State agency entered the date of the child's removal from his/her parent/legal guardian. The State agency must enter the removal transaction date into the information system no later than 15 days after the date of the child's removal from his/her parent/legal guardian. Indicate the month, day and year of each transaction date.

(3) *Environment at removal.* Indicate the child's general environment at the time of each removal. Indicate ''household'' if the child was removed from the household of a parent, legal guardian or other caretaker. Indicate ''other environment or facility,'' if the child was not living with a parent, legal guardian or other caretaker at removal, such as if the child has run away or was in a facility or institution. Indicate ''abandoned'' if the child was abandoned at the time of removal. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(4) *Household composition at removal.* Indicate with whom the child was living as described in paragraphs (d)(4)(i) through (xi) of this section by indicating how many of such persons were in the household, if the State indicated that the child was removed from a household in the element described in paragraph (d)(3) of this section.

(i) *Biological parent.* Indicate the number of biological parents with whom the child was living.

(ii) *Adoptive parent.* Indicate the number of adoptive parents with whom the child was living.

(iii) *Stepparent.* Indicate the number of stepparents with whom the child was living.

(iv) *Legal guardian.* Indicate the number of legal guardians with whom the child was living. Include in this count any legal guardian regardless of any other relationship between the child and the guardian.

(v) *Maternal grandparent.* Indicate the number of maternal grandparents (by biological, legal or marital connection) with whom the child was living.

(vi) *Paternal grandparent.* Indicate the number of paternal grandparents (by biological, legal or marital connection) with whom the child was living.

(vii) *Other maternal relative.* Indicate the number of other maternal relatives (by biological, legal or marital connection), with whom the child was living, such as an aunt, uncle or cousin.

(viii) *Other paternal relative.* Indicate the number of other paternal relatives (by biological, legal or marital connection) with whom the child was living, such as an aunt, uncle or cousin.

(ix) *Adult sibling.* Indicate the number of adult brothers or sisters with whom the child was living.

(x) *Parent's or caretaker's paramour.* Indicate the number of paramours (*i.e.*, a girlfriend, boyfriend or partner) of the child's parent or legal guardian with whom the child was living.

(xi) *Other non-relative caretaker.* Indicate the number of non-related caretakers with whom the child was living at the time of removal. For the purpose of this description, a caretaker is someone who has assumed (wholly or shared) responsibility for the day-to-day care of the child.

(5) *Biological parents' marital status.* If the child was living with at least one biological parent as indicated in the element described in paragraph (d)(4)(i) of this section, indicate the relationship between the child's biological parents at the time of removal. Indicate ''married and living together'' if the child's biological parents were united in matrimony according to the laws of the State and living together at the time of the child's removal. Indicate ''married and living separately'' if the child's biological parents were united in matrimony according to the laws of the State and were not living together at the time of the child's removal. Indicate ''unmarried and living together'' if the child's biological parents were not united in matrimony according to the laws of the State but were living together at the time of the child's removal. Indicate ''unmarried and living separately'' if the child's biological parents were not united in matrimony according to the laws of the State and were not living together at the time of the child's removal. Indicate ''deceased parent'' if one of the child's biological parents was deceased at the time of the child's removal.

(6) *Manner of removal.* Indicate the State's authority for removing the child from his/her home for each removal. ''Court ordered removal'' means that the court has issued an order that is the basis for the child's removal. ''Voluntary Placement Agreement'' means that an official voluntary placement agreement has been executed between the parent or guardian and the State agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in out-of-home care. ''Not yet determined'' means that a voluntary placement agreement has not been signed or a court order has not been issued, such as in the case of an administrative or police hold. When either a voluntary placement agreement is signed or a court order issued, the record must be updated to reflect the manner of removal at that time.

(7) *Child and family circumstances at removal.* For each out-of-home care episode in the current report period, indicate all child and family circumstances that were applicable at the time of removal. ''Child status offender'' means the child is alleged or found to be a status offender. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. ''Child delinquency'' means that the child is alleged or found to be adjudicated delinquent. ''Runaway'' means the child had run away from home at the time the State title IV–B/IV–E agency received placement and care responsibility for the child. ''Physical abuse'' is alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare. ''Sexual abuse'' is alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child's welfare. ''Psychological or emotional abuse'' is alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare. ''Neglect'' is alleged or substantiated negligent treatment or maltreatment including failure to provide adequate food, clothing, shelter or care by a person who is responsible for the child's welfare. ''Medical neglect'' is alleged or substantiated medical neglect caused by failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so. ''Domestic violence'' is alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner. This does not include alleged or substantiated maltreatment of the child who is the subject of the report. ''Abandonment'' means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' This category does not apply when the identity of the parent is known. ''Failure to provide

supervision'' means the parent, legal guardian or caretaker failed/fails to provide adequate care and/or age appropriate supervision for the child on a recurring or long term basis. ''Failure to return'' means the parent, legal guardian or caretaker did not return/has not returned for the child or made his/her whereabouts known. ''Caretaker's alcohol abuse'' refers to a parent, legal guardian, or other caretaker responsible for the child who uses alcohol compulsively. ''Caretaker's drug abuse'' refers to a parent, legal guardian or other caretaker who uses drugs compulsively. ''Child alcohol use'' means the child uses alcohol compulsively. ''Child drug use'' means the child uses drugs compulsively. ''Prenatal alcohol exposure'' means the child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome. ''Prenatal drug exposure'' means the child has been identified as prenatally exposed to drugs. ''Diagnosed condition'' means the child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: mental retardation, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability, or other clinically diagnosed condition. ''Inadequate access to mental health services'' refers to a circumstance where the child's family has inadequate resources to access necessary mental health services outside of his/her out-of-home care placement. ''Inadequate access to medical services'' means the child's family has inadequate resources to access necessary medical services outside of his/her out-of-home care placement. ''Child behavior problem'' means the child's behavior in his/her school and/or community adversely affects his/her socialization, learning, growth and/or moral development. This includes all child behavior problems, except adjudicated and non-adjudicated status or delinquency offenses. ''Death of caretaker'' refers to existing family stress or an inability to care for the child due to the death of a parent, or legal guardian, or other caretaker. ''Incarceration of caretaker'' means the child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his/her ability to care for the child. ''Caretaker's inability to cope'' means a physical or emotional illness or disabling condition of the child's parent, legal guardian, or caretaker adversely affect his/her ability to care for the child. ''Caretaker's limited mental capacity'' means the child's parent, legal guardian or caretaker has limitations in his/her ability to function in areas of daily life, such as communication or self-care which adversely affects his/her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence. ''Inadequate housing'' indicates that the family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the parents and child to reside together. This circumstance also includes homelessness. ''Disrupted intercountry adoption'' means the child's intercountry adoption has disrupted. Specifically, the child is involved in a disrupted intercountry adoption if immediately prior to entering out-of-home care the child was brought to the United States and placed in a preadoptive home, but the adoption has not been finalized. ''Voluntary relinquishment'' indicates that the child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the agency, in writing, for the purpose of having the child adopted.

(e) *Living arrangement and provider information—(1) Date of living arrangement.* Enter the month, day and year of each of the child's living arrangements for each out-of-home care episode. Include the date of any runaway episode. In the case of a child who enters the reporting population in the midst of an out-of-home living arrangement, indicate the date the child enters the reporting population rather than the date the child was originally placed in the living arrangement.

(2) *Foster family home.* Indicate whether each of the child's living arrangements is a foster family home, with a ''yes'' or ''no'' as appropriate. If the child has run away from his/her living arrangement, indicate ''no.'' If the child is in a foster family home, the State agency must complete the element Foster family home type in paragraph (e)(3) of this section; otherwise the State agency is to respond to the element Other living arrangement type in paragraph (e)(4) of this section.

(3) *Foster family home type.* If the child is living in a foster family home according to the element Foster family home described in paragraph (e)(2) of this section, indicate all of the following that apply; otherwise leave blank. Indicate ''licensed home'' if the child's living arrangement is licensed or approved by the State agency responsible for licensing, by other agencies under contract with the title IV–B/IV–E agency, or by Indian Tribal licensing/approval authorities for foster family homes located on or near a reservation. Indicate ''therapeutic foster family home'' if the home provides specialized care and services. Indicate ''shelter care foster family home'' if the home has been designated by the State agency or licensing entity as a shelter care home, which is designed to provide short-term or transitional care. Indicate ''relative foster family home'' if the foster parents are related to the child by biological, legal or marital connection and live in the home as their primary residence. Indicate ''pre-adoptive home'' if the home is one in which the family and the agency have agreed on a plan to adopt the child. The family may or may not be receiving a foster care maintenance payment or an adoption subsidy on behalf of the child.

(4) *Other living arrangement type.* If the child is living in an arrangement other than a foster family home according to the response in the element Foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise leave this element blank. Indicate ''group home-family operated'' if the child is in a group home that provides 24-hour care in a private family home in which the family members are the primary caregivers. Indicate ''group home-staff operated'' if the child is in a group home that provides 24-hour care for children in which the care-giving is provided by shift or rotating staff. Indicate ''group home-shelter care'' if the child is in a group home that provides 24-hour care and is designated by the State agency or licensing entity to provide shelter care which is short-term or transitional in nature. Indicate ''residential treatment center'' if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions. Indicate ''child care institution'' if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. Do not consider detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent as a child

care institution. Indicate ''child care institution-shelter care'' if the child is in a child care institution as defined above and the institution is designated by the State agency or licensing entity to provide shelter care which is short-term or transitional in nature. Indicate ''supervised independent living'' if the child is in an alternative transitional living arrangement where the child is under the placement and care responsibility of the agency but without 24-hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care. Indicate ''juvenile justice facility'' if the child is in a secure facility or institution in which alleged or adjudicated juvenile delinquents are housed while under the State agency's placement and care. Indicate ''medical or rehabilitative facility'' if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate ''psychiatric facility'' if the child is in a facility where an individual receives emotional or psychological health care, such as a psychiatric hospital or residential treatment center. Indicate ''runaway'' if the child has left, without authorization, the home or facility in which the child was placed.

(5) *Private agency living arrangement.* Indicate the type of contractual relationship with a private agency for each of the child's living arrangements. Indicate ''private agency involvement'' if the child is placed in a living arrangement that is either licensed, managed or run by a private agency that is under contract with the State agency. Indicate ''no private agency involvement'' if the child's living arrangement is not licensed, managed or run by a private agency. Indicate ''runaway'' if the child has run away from his/her living arrangement.

(6) *Location of living arrangement.* Indicate the general location of each of the child's living arrangement. Indicate ''out-of-State'' if the child's living arrangement is located in another U.S. State or Territory outside of the reporting State. Indicate ''in-State'' if the child's living arrangement is located in the reporting State. Indicate ''out-of-country'' if the child's living arrangement is outside of the United States. Indicate ''runaway'' if the child has run away from his living arrangement.

(7) *State or country where child is living.* Indicate the FIPS code for the State or country where the child is placed for each living arrangement, if the State agency indicated the arrangement was either out-of-State or outside of the United States according to the element Location of living arrangement described in paragraph (e)(6) of this section; otherwise leave blank.

(8) *Number of siblings placed together.* Indicate the total number of siblings who are also in the State's out-of-home care placed with the child in the same living arrangement on the last day of each of the child's living arrangement(s). A sibling to the child is his/her brother or sister by biological, legal or marital connection who also is a minor. Report this information whether the child's living arrangement is in or out-of-State. Do not include the child who is the subject of this record in this number. Indicate ''0'' if the child does not have any siblings in out-of-home care.

(9) *Number of children living with the minor parent.* Indicate the number of the young person's children living with him or her in the same living arrangement if the State agency indicated that the young person has children in the element Minor parent described in paragraph (b)(12) of this section. Do not include any child(ren) of the young person who themselves are in out-of-home care. If the young person does not have any children leave this element blank.

(10) *Foster parent's marital status.* For each foster family home living arrangement in which the child is placed, indicate the marital status of the child's foster parent(s). Indicate ''married couple'' if the foster parents are considered united in matrimony according to the laws of the State. Include common law marriage, where provided by State law. Indicate ''unmarried couple'' if the foster parents are living together as a couple, but are not united in matrimony according to the laws of the State. Indicate ''separated'' if the parent is legally separated or is living apart from a spouse. Indicate ''single female'' if the foster parent is a female who is not married and is not living with another individual as part of a couple. Indicate ''single male'' if the foster parent is a male who is not married and is not living with another individual as part of a couple. If the foster parents' marital status is either ''married couple'' or ''unmarried couple'' the State agency must complete the second foster parent data elements described in paragraphs (e)(16) through (e)(20) of this section; otherwise leave those elements blank.

(11) *Foster parent(s) relationship to the child.* For each foster family home living arrangement in which the child is placed, indicate the relationship of the foster parent(s) to the child. Indicate ''paternal grandparent(s)'' if the foster parent(s) is the child's paternal grandparent (by biological, legal or marital connection). Indicate ''maternal grandparent(s)'' if the foster parent(s) is the child's maternal grandparent (by biological, legal or marital connection). Indicate ''other paternal relative(s)'' if the foster parent(s) is the child's paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate ''other maternal relative(s)'' if the foster parent(s) is the child's maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate ''sibling(s)'' if the foster parent(s) is a brother or sister of the child, either biologically, legally or by marriage. Indicate ''non-relative(s)'' if the foster parent(s) is not related to the child (through a biological, legal or marital connection).

(12) *Year of birth for first foster parent.* Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed.

(13) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (e)(13)(i) through (e)(3)(vii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The foster parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(14) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the first foster parent does not know his/her ethnicity indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.''

(15) *First foster parent's language.* In paragraphs (e)(15) (i) and (ii) of this section, if applicable, indicate the languages used and language preference for the first foster parent.

(i) *Language of first foster parent.* Indicate all languages used by the foster parent. Select all of the following that apply, and/or indicate which language the foster parent uses if not specified: ''English,'' ''Spanish,'' ''Chinese,'' ''French,'' ''German,'' ''Tagalog,'' or ''Sign Language.''

(ii) *Language preference for first foster parent.* For a foster parent who uses two or more languages as indicated in the element Languages used by first foster parent described in paragraph (e)(15)(i) of this section, indicate the language with which the foster parent has the greatest facility, or languages if the foster parent has a similar facility with two or more languages.

(16) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. A foster parent must be at least 18 years old. Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(17) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (e)(17)(i) through (e)(17)(vii) of this section applies with a ''yes'' or ''no.'' Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The foster parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(18) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the second foster parent does not know his/her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.'' Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(19) *Second foster parent's language.* In paragraphs (e)(19)(i) and (e)(19)(ii) of this section, if applicable, indicate the languages used and language preference for the second foster parent.

(i) *Language of second foster parent.* If applicable, indicate all languages used by the foster parent. Select all of the following that apply, and/or indicate which language the foster parent uses if not specified: ''English,'' ''Spanish,'' ''Chinese,'' ''French,'' ''German,'' ''Tagalog,'' or ''Sign Language.'' Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(ii) *Language preference for second foster parent.* For a foster parent who uses two or more languages as indicated in the element Languages used by second foster parent described in paragraph (e)(19)(i) of this section, indicate the language with which the foster parent has the greatest facility, or languages, if the foster parent has a similar facility with two or more languages.

(20) *Sources of Federal assistance in living arrangement.* Indicate all that apply on the last day of the child's placement in each living arrangement or the last day of the report period if the child's living arrangement is ongoing. Indicate ''title IV–E foster care'' if the child is determined eligible for title IV–E foster care maintenance payments. Indicate ''title IV–E adoption subsidy'' if the child is determined eligible for a title IV–E adoption assistance subsidy. Indicate ''Title IV–A TANF'' if the child is living with relatives who are receiving a TANF cash assistance payment on behalf of the child. Indicate ''title IV–B'' if the child's living arrangement is supported by funds under title IV–B of the Social Security Act. Indicate ''SSBG'' if the child's living arrangement is supported by funds under title XX of the Social Security Act. Indicate ''other federal source'' if the child's living arrangement is supported through other Federal funds not indicated above. If there was no Federal funding source to support the child's living arrangement on the last day of placement or last day of the report period, indicate ''no Federal source.''

(21) *Amount of payment.* Indicate the total (State and Federal share) per diem amount of the foster care maintenance payment or adoption assistance subsidy paid to the foster or adoptive parents on behalf of the title IV–E eligible child on the last day of each living arrangement or the last day of the report period, if so indicated in paragraph (e)(20) of this section. If no payment was made, indicate zero.

(f) *Permanency plan information and ongoing circumstances*—(1) *Permanency plan.* Indicate each permanency plan established for the child. Indicate ''reunify with parent(s) or legal guardian(s)'' if the plan is to keep the child in out-of-home care for a limited time to enable the State agency

to work with the child's parent or legal guardian to establish a stable family environment. Indicate ''live with other relatives'' if the plan is for the child to live permanently with a relative or relatives (through a biological, legal or marital connection) who are not the child's parents or legal guardians. Indicate ''adoption'' if the goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals. Indicate ''planned permanent living arrangement'' if the plan is to maintain the child in a long-term living arrangement because there is a specific reason, factor, or condition why it is not appropriate or possible to return the child home, live with relatives, obtain legal guardianship or place the child for adoption. Indicate ''independent living'' if the plan is for the child to live independently because of a specific reason, factor or condition, it is not appropriate or possible to return the child home, have the child live permanently with a relative, have the child be adopted, or placed under a guardianship arrangement and the child is receiving or eligible to receive independent living services. Indicate ''relative guardianship'' if the plan is to establish a new legal guardianship with a relative (through a biological, legal or marital connection). Indicate ''non-relative guardianship'' if the plan is to establish a new legal guardianship with an unrelated individual. Indicate ''permanency plan not established'' if a permanency plan has not yet been established.

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan was established during each out-of-home care episode.

(3) *Concurrent planning.* Indicate whether the State agency has identified a concurrent plan for the child. Indicate ''concurrent plan,'' if there is a concurrent plan for the child, ''no concurrent plan'' if the State agency uses concurrent planning but does not have a concurrent plan for the child, or ''not applicable'' if the State (or local) agency does not engage in concurrent planning. If the State agency indicates that the child has a concurrent plan, the State agency must complete the elements Concurrent permanency plan and Date of concurrent plan described in paragraphs (f)(3)(i) and (f)(3)(ii) of this section; otherwise leave these elements blank.

(i) *Concurrent permanency plan.* If the child has a concurrent permanency plan as indicated in the element Concurrent planning described in paragraph (f)(3) of this section, indicate the type. Indicate ''live with other relatives'' if the plan is for the child to live permanently with a relative or relatives (through a biological, legal or marital connection) who are not the child's parents or legal guardians. Indicate ''adoption'' if the goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals. Indicate ''planned permanent living arrangement'' if the plan is to maintain the child in a long-term living arrangement because there is a specific reason, factor, or condition why it is not appropriate or possible to return the child home, live with relatives, obtain legal guardianship or place the child for adoption. Indicate ''independent living'' if the plan is for the child to live independently because of a specific reason, factor or condition, it is not appropriate or possible to return the child home, have a child live permanently with a relative, have the child be adopted, or placed under a guardianship arrangement; and the child is receiving or eligible to receive independent living services. Indicate ''relative guardianship'' if the plan is to establish a new legal guardianship with a relative (through a biological, legal or marital connection). Indicate ''non-relative guardianship'' if the plan is to establish a new legal guardianship with an unrelated individual.

(ii) *Date of concurrent plan.* Indicate the month, day and year that each concurrent plan was established if the State agency indicated that the child has a concurrent plan in the element Concurrent planning described in paragraph (f)(3) of this section.

(4) *Date of periodic review or hearing.* Enter the date of each periodic review that meets the requirements of section 475(5)(B) of the Social Security Act and permanency hearing that meets the requirements of section 475(5)(C) of the Social Security Act.

(5) *Juvenile justice involvement.* Indicate whether the child was involved with the juvenile justice system at any time during each report period. If the child was not involved with the juvenile justice system during a report period indicate ''not involved.'' If the child was involved with the juvenile justice system, indicate the type of involvement. Indicate ''alleged status offender'' if a petition has been filed that alleges that the child has committed a status offense. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate ''status offender'' if the child has been found to be a status offender by a juvenile judge or court. Indicate ''alleged juvenile delinquent'' if a petition has been filed that alleges that the child has committed a delinquent act. Indicate ''adjudicated delinquent'' if the child has been adjudicated delinquent by a juvenile judge or court.

(6) *Circumstances at initial permanency plan.* For each out-of-home care episode, indicate all child and family circumstances that are applicable at the time that the State agency develops the initial permanency plan for the child, if applicable. The response options have the same definitions as indicated in paragraph (d)(7) of this section; however, the State agency must also indicate that a circumstance is applicable if the State agency has assessed that the child or family is in need of services with regard to these issues: ''Physical abuse,'' ''Sexual abuse,'' ''Psychological or emotional abuse,'' ''Neglect,'' ''Medical neglect,'' ''Domestic violence,'' ''Abandonment,'' ''Failure to provide supervision,'' ''Failure to return,'' ''Caretaker's alcohol abuse,'' ''Caretaker's drug abuse,'' ''Child alcohol use,'' ''Child drug use,'' ''Prenatal alcohol exposure,'' ''Prenatal drug exposure,'' ''Diagnosed condition,'' ''Inadequate access to mental health services,'' ''Inadequate access to medical services,'' ''Child behavior problem,'' ''Death of caretaker,'' ''Incarceration of caretaker,'' ''Caretaker's inability to cope,'' ''Caretaker's limited mental capacity,'' ''Inadequate housing,'' ''Disrupted intercountry adoption,'' ''Voluntary relinquishment,'' or, ''None of the above'' if none of the above response options is applicable for the child and/or family.

(7) *Annual circumstances.* For each out-of-home care episode, indicate all child and family circumstances that apply or are unresolved at the permanency hearing, if applicable. If the State conducts permanency hearings more frequently than annually, indicate the circumstances applicable once the child has been in foster care 12 months, and every 12 months thereafter. The response options have the same definitions as indicated in paragraph (d)(7) of this section; however, the State agency must also indicate that a circumstance is applicable if the State agency has assessed that the child or family is in need of services with regard to these issues: ''Physical abuse,'' ''Sexual abuse,'' ''Psychological or emotional abuse,'' ''Neglect,'' ''Medical neglect,'' ''Domestic violence,'' ''Abandonment,'' ''Failure to provide supervision,'' ''Failure to return,'' ''Caretaker's alcohol abuse,'' ''Caretaker's drug abuse,'' ''Child alcohol use,'' ''Child drug use,'' ''Prenatal alcohol exposure,'' ''Prenatal drug exposure,'' ''Diagnosed condition,'' ''Inadequate access to mental health

services,'' ''Inadequate access to medical services,'' ''Child behavior problem,'' ''Death of caretaker,'' ''Incarceration of caretaker,'' ''Caretaker's inability to cope,'' ''Caretaker's limited mental capacity,'' ''Inadequate housing,'' ''Disrupted intercountry adoption,'' ''Voluntary relinquishment,'' or, ''None of the above'' if none of the above response options are applicable for the child and/or family.

(8) *Annual circumstances date.* Indicate the date(s) that the State agency indicated in the element Annual circumstances described in paragraph (f)(7) of this section.

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the agency's placement and care responsibility of the child ends, the child is returned to his/her parents or legal guardians, or the child reaches the State's age of majority and is not receiving title IV–E foster care maintenance payments.

(1) *Date of exit.* Indicate the month, day and year of each of the child's exits out-of-home care. For a child who exits out-of-home care due to an adoption, enter the date the court finalized the adoption. If the child has not exited out-of-home care leave this element blank. If this element is applicable, the State agency must complete the elements Exit transaction date, Exit reason and Circumstances at exit from out-of-home care in paragraphs (g)(2), (g)(3) and (g)(6) of this section; otherwise leave those elements blank.

(2) *Exit transaction date.* The State agency must report the transaction date for each of the child's exits from out-of-home care. The transaction date is a computer-generated, non-modifiable date that indicates accurately the month, day and year in which State agency entered the date of the child's exit into the information system and must be entered no later than 15 days after the child's exit.

(3) *Exit reason.* Indicate the reason for each of the child's exits from out-of-home care. Indicate ''reunify with parents/legal guardian'' if the child was returned to his/her parent(s) or legal guardian. This includes a child returned to the parent under the agency's placement and care responsibility. Indicate ''live with other relatives'' if the child exited to live with a relative (related by a biological, legal or marital connection), other than his/her parent or legal guardian. Indicate ''adoption'' if the child was legally adopted. Indicate ''emancipation'' if the child exited care because he/she reached the age of majority according to State law by virtue of age, marriage, etc. Indicate ''relative guardianship'' if the child exited care due to a relative (related by a biological, legal or marital connection) obtaining legal guardianship of the child. Indicate ''non-relative guardianship'' if the child exited care due to a non-relative obtaining legal guardianship of the child. Indicate ''transfer to another agency'' if the responsibility for the child's placement and care was transferred to a different agency, either within or outside of the State. Indicate ''runaway'' if the child ran away and the State agency's responsibility for placement and care ended by State law, policy or court order. Indicate ''death of child'' if the child died while in out-of-home care. If the State agency indicates that the child exited due to the child's death, the State agency must complete the element Death due to abuse/neglect in care described in paragraph (g)(4) of this section. If the State agency indicates that the child exited due to a transfer to another agency the State agency must complete the element Transfer to another agency described in paragraph (g)(5) of this section.

(4) *Death due to abuse/neglect in care.* If the State indicated the child died in out-of-home care in the element Exit reason described in paragraph (g)(3) of this section, indicate whether the child died due to abuse or neglect by the provider. Indicate ''provider responsible'' if the State has concluded that the child's death is due to a provider's abuse or neglect. Indicate ''provider not responsible'' if the State has concluded that the child's death was not due to a provider's abuse or neglect.'' Indicate ''not yet determined'' if the State is involved in an ongoing investigation to determine the culpability of a provider in the child's death.

(5) *Transfer to another agency.* If the State agency indicated that the child was transferred to another agency in the element Exit reason described in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility from the following options: ''Tribe or tribal agency,'' ''juvenile justice agency,'' ''mental health agency,'' ''other State agency,'' or ''private agency.''

(6) *Circumstances at exit from foster care.* For each out-of-home care episode, indicate all child and family circumstances that apply or are unresolved at the time of the child's exit from out-of-home care. The State agency must also indicate that a circumstance is applicable if the State agency has put in place referrals for services or is providing monitoring or after care services with regard to any of the following issues. The response options have the same definitions as indicated in paragraph (d)(7) of this section. ''Physical abuse,'' ''Sexual abuse,'' ''Psychological or emotional abuse,'' ''Neglect,'' ''Medical neglect,'' ''Domestic violence,'' ''Abandonment,'' ''Failure to provide supervision,'' ''Failure to return,'' ''Caretaker's alcohol abuse,'' ''Caretaker's drug abuse,'' ''Child alcohol use,'' ''Child drug use,'' ''Prenatal alcohol exposure,'' ''Prenatal drug exposure,'' ''Diagnosed condition,'' ''Inadequate access to mental health services,'' ''Inadequate access to medical services,'' ''Child behavior problem,'' ''Death of caretaker,'' ''Incarceration of caretaker,'' ''Caretaker's inability to cope,'' ''Caretaker's limited mental capacity,'' ''Inadequate housing,'' ''Disrupted intercountry adoption,'' ''Voluntary relinquishment,'' or, ''None of the above'' if none of the above response options is applicable for the child and/or family.

(h) *Exit to adoption information.* Report information in paragraphs (h)(1) through (h)(11) of this section only if the State agency indicated that the child exited to adoption in the element Exit reason described in paragraph (g)(3) of this section.

(1) *Adoptive parent(s) marital status.* Indicate the marital status of the adoptive parent(s). Indicate ''married couple'' if the adoptive parents are considered united in matrimony according to the laws of the State. Include common law marriage, where provided by State law. Indicate ''unmarried couple'' if the adoptive parents are living together as a couple, but are not united in matrimony according to the laws of the State. Indicate ''single female'' if the adoptive parent is a female who is not married and is not living with another individual as part of a couple. Indicate ''single male'' if the adoptive parent is a male who is not married and is not living with another individual as part of a couple. If the response is ''married'' or ''unmarried couple'' the State agency must also complete the data elements for the second adoptive parent in paragraphs (h)(6) through (h)(8) of this section.

(2) *Adoptive parent(s) relationship to the child.* Indicate the type of relationship, kinship or otherwise, between the child and his adoptive parent or parents. Select all that apply. ''Paternal grandparent(s)'' means the adoptive parent(s) is the child's paternal grandparent(s) (by a biological, legal or marital connection). ''Maternal grandparents'' means the adoptive parent(s) is the child's maternal grandparent(s) (by a biological, legal or marital connection). ''Other paternal

relative(s)'' means the adoptive parent(s) is the child's paternal relative (by a biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. ''Other maternal relative(s)'' means the adoptive parent(s) is the child's maternal relative (by a biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. ''Sibling(s)'' means an adoptive parent is a brother or sister of the child, either biologically, legally or by marriage. ''Non-relative(s)'' means the adoptive parent(s) is not related to the child through a biological, legal or marital connection. ''Foster parent(s)'' means the adoptive parent(s) was the child's foster parent(s).

(3) *Date of birth of first adoptive parent.* Indicate the month, day and year of the first adoptive parent's date of birth.

(4) *First adoptive parent's race.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (h)(4)(i) through (h)(4)(vii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The adoptive parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The first adoptive parent has declined to identify a race.

(5) *First adoptive parent's Hispanic or Latino ethnicity.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the first adoptive parent does not know his/her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.''

(6) *Date of birth of second adoptive parent.* Indicate the month, day and year of the second adoptive parent's date of birth. Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1) of this section.

(7) *Second adoptive parent's race.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (h)(7)(i) through (vii) of this section applies with a ''yes'' or ''no.'' Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The second adoptive parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The second adoptive parent has declined to identify a race.

(8) *Second adoptive parent's Hispanic or Latino ethnicity.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the second adoptive parent does not know his/her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.'' Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1).

(9) *Interstate or intercountry adoption.* Indicate whether the child was placed across State lines or into another country for the adoption. Indicate ''interstate adoption'' if the adoptive parent(s) live in another State other than the one placing the child. Indicate ''intercountry adoption'' if the adoptive parent(s) live outside of the United States of America. Indicate ''intrastate adoption'' if the child was placed within the reporting State.

(10) *Interjurisdictional adoption location.* Indicate the FIPS code for the State or country in which the child was placed for adoption if the State agency indicated that the child was placed across State lines or outside the country in the element Interstate or intercountry adoption described in paragraph (h)(9) of this section.

(11) *Adoption placing agency or individual.* Indicate the agency or individual that placed the child for adoption. Indicate ''State agency'' if the reporting State agency had responsibility for placement and care of the child while in out-of-home care. Indicate ''private agency under a contract/agreement'' if the reporting State had responsibility for the child's placement and care and contracted with a private agency for the child's placement for adoption. Indicate ''Tribal agency with agreement'' if the reporting State had placement and care of the child and an interagency agreement or contract with an Indian Tribe for placement of the child for adoption.

§ 1355.44 Adoption assistance and guardianship subsidy data file elements.

A State agency must collect and report the following information for each child in the adoption assistance and guardianship subsidy reporting population, if applicable based on 45 CFR 1355.42(c) of this part.

(a) *General information*—(1) *State.* State means the State responsible for reporting the child. Indicate the first two digits of the State's Federal Information Processing Standard (FIPS)

code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.

(3) *Child record number.* The record number is the encrypted, unique person identification number. The person identification number must remain the same for the child, no matter where the child lives and across all report periods. The State agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child Demographics.*—(1) *Date of birth.* Indicate the month, day and year of the child's birth.

(2) *Child's race.* In general, a child's race is determined by the child or the child's parent(s). Indicate whether each race category listed in the elements described in paragraphs (b)(2)(i) through (b)(2)(viii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White child has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—Unknown.* The child or parent does not know the race, or at least one race of the child.

(vii) *Race—Abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the previous/original parent or legal guardian's identity was unknown and could not be ascertained. This includes a child left at a ''safe haven.''

(viii) *Race—Declined.* The child or parent has declined to identify a race.

(3) *Hispanic or Latino Ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the parent/child does not know whether the child is of Hispanic or Latino ethnicity, indicate ''unknown.'' If the child was abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the previous/original parent or legal guardian's identity was unknown and could not be ascertained. This includes a child left at a ''safe haven.'' If the child or parent refuses to identify the child's ethnicity, indicate ''declined.''

(c) *Adoption assistance agreement information*—(1) *Adoption assistance agreement type.* Indicate whether the child is or was in an adoptive placement or finalized adoption with a title IV–E adoption assistance agreement or a State adoption assistance agreement in effect during the report period. ''Title IV–E agreement'' means an agreement with adoptive parents or prospective adoptive parents for adoption assistance pursuant to section 473 of the Social Security Act. ''State agreement'' means an agreement with adoptive parent(s) or prospective adoptive parent(s) for adoption assistance as defined by the State, other than a title IV–E agreement. Indicate ''title IV–E agreement'' or ''State agreement'' as appropriate.

(2) *Adoption subsidy amount.* Indicate the per diem dollar amount of the financial subsidy paid to the adoptive or prospective adoptive parent(s) on behalf of the child during the last month of the current report period, if any. The State agency must indicate ''0'' if a financial subsidy was not paid during the last month of the report period.

(3) *Nonrecurring adoption expenses.* Indicate whether payments were made to the adoptive or prospective adoptive parent(s) or such parents were reimbursed for nonrecurring adoption expenses during the current report period, if the State agency reported that the child has a title IV–E adoption assistance agreement in the element Adoption assistance agreement type described in paragraph (c)(1) of this section. Nonrecurring adoption expenses are reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs. Indicate ''expenses paid'' or ''no expenses paid'' as appropriate.

(4) *Nonrecurring adoption expenses amount.* Indicate the total dollar amount of the payment made to or on behalf of the adoptive or prospective adoptive parent(s) for the nonrecurring adoption expenses during the report period if the State agency reported that these expenses were paid in the element Nonrecurring adoption expenses described in paragraph (c)(3) of this section; otherwise leave this element blank.

(5) *Final adoption.* Indicate whether the child has a finalized adoption, with ''adoption final'' or ''adoption not final'' as appropriate.

(6) *Adoption finalization date.* Indicate the month, day and year that the child's adoption was finalized if the State agency indicated there is a final adoption in the element Final adoption in paragraph (c)(5) of this section; otherwise leave this element blank.

(7) *Interstate and intercountry adoption.* Indicate whether the child was placed across State lines or was involved in an intercountry adoption. Indicate ''interstate adoption'' if the adoptive parent(s) live in another State other than the reporting State. Indicate ''intrastate adoption'' if the child is placed within the State that entered the adoption assistance agreement. Indicate ''intercountry adoption—incoming'' if the State agency has entered into an adoption assistance agreement on behalf of a child who immediately prior to adoptive placement was brought into the country for the purpose of achieving an adoption within the United States. Indicate ''intercountry adoption—outgoing'' if the State agency has entered into an adoption assistance agreement on behalf of a child who is emigrating to another country for the purposes of adoption.

(8) *Interjurisdictional adoption location.* Indicate the FIPS code for the location, either State or country, in which the child was placed into or placed from, if the State agency indicated that the child's adoption was an interstate, or an incoming or outgoing intercountry adoption in the element Interstate and intercountry adoption described in paragraph (c)(7) of this section; otherwise leave blank.

(9) *Adoption placing agency or individual.* Indicate the agency or individual that placed the child for adoption. Indicate ''State agency'' if the reporting State agency had responsibility for placement and care of the child while away from his or her parents or legal guardians. Indicate ''private agency under a contract/

agreement'' if the reporting State title IV–B/IV–E agency had responsibility for the child's placement and care and contracted with a private agency for the child's placement for adoption. Indicate ''Tribal agency with agreement'' if the reporting State title IV–B/IV–E agency had placement and care of the child and entered into an interagency agreement or contract with an Indian Tribe for placement of the child for adoption. Indicate ''Tribal agency'' if a tribe or unit within a tribe had sole responsibility for the child's placement and care and placed the child for adoption. Indicate ''private agency'' if a private agency had legal custody of the child or on behalf of a parent placed the child for adoption. Indicate ''birth parent'' if the birth parent placed the child for adoption without the assistance of a third party. Indicate ''independent person'' if a person other than the parent, such as a doctor, lawyer or other intermediary, facilitated the child's adoption.

(10) *Agreement termination date.* If the State agency terminated the adoption assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement was terminated or expired; otherwise leave this element blank.

(d) *Subsidized guardianship information.* The State agency must report information for the elements described in paragraphs (d)(1) through (d)(3) of this section for all children who are in a guardianship placement with a subsidized guardianship agreement during the report period; otherwise leave these elements blank.

(1) *Subsidized guardianship agreement type.* Indicate whether the child is under a title IV–E or State guardianship placement, with ongoing monthly payments during the current report period. ''Title IV–E guardianship'' means that the State agency is paying a subsidy to the child's guardian that includes title IV–E funds pursuant to an HHS-approved demonstration waiver. ''State guardianship'' means that the State agency is paying a subsidy to the child's guardian that does not include any title IV–E funds. Indicate ''title IV–E guardianship'' or ''State guardianship'' as appropriate.

(2) *Subsidized guardianship amount.* Indicate the per diem dollar amount of the subsidy paid to the guardian on behalf of the child for the last month of the current report period. Indicate ''0'' if a financial subsidy was not paid during the last month of the report period.

(3) *Agreement termination date.* If the State agency terminated the guardianship agreement or the agreement expired during the report period, indicate the month, day and year the agreement was terminated or expired.

§ 1355.45 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care data file that a State agency submits to determine whether the data complies with the requirements of 45 CFR 1355.42 of this part and the file submission and data quality standards described in paragraphs (c) and (d) of this section.

(b) *Errors.* ACF will assess a State's out-of-home care file for errors as described in paragraphs (b)(1) through (b)(5) of this section to determine if the State agency meets the file and data standards outlined in paragraph (c) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which an element has a blank or otherwise missing response, when such a response is not a valid option as described in 45 CFR 1355.43 of this part.

(2) *Invalid data.* Invalid data refers to instances in which an element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in 45 CFR 1355.43 of this part.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which an element fails an internal consistency check designed to validate the logical relationship between elements within each record. This assessment will identify all elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for an element recurs across the records in the out-of-home care data file beyond a specified acceptable threshold.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in 45 CFR 1355.43(d)(2) and (g)(2) of this part respectively, are entered into the State agency's information system more than 15 days after the event.

(c) *File standards.* To be in compliance with the AFCARS requirements the State agency must submit a data file in accordance with the file standards described in paragraphs (c)(1) through (c)(3) of this section.

(1) *Timely submission.* ACF must receive the out-of-home care data file on or before the reporting deadline described in 45 CFR 1355.42(a) of this part.

(2) *Proper format.* The out-of-home care data file must meet the technical standards issued by ACF for file construction and transmission. In addition, every record within the data file must have the elements described in 45 CFR 1355.43(a)(1) through (a)(5), 1355.43(b)(1) and 1355.43(b)(2) of this part be 100 percent free of missing data, invalid data and internally inconsistent data. ACF will not process a State agency's out-of-home care data file that does not meet the proper format standard.

(3) *Acceptable cross-file.* The out-of-home care data file must be free of any cross-file errors.

(d) *Data quality standards.* To be in compliance with the AFCARS requirements the State agency must also submit a data file that for applicable records, have no more than 10 percent of data missing, 10 percent of data invalid, 10 percent of data internally inconsistent; or, 10 percent as tardy transactions.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the State agency's out-of-home care data file meets the file standards in paragraph (c) of this section. If the State agency's data file does not meet the file standards, ACF will so notify the State.

(2) If the State agency meets the file standards, ACF will then determine whether the State agency's data file meets the data quality standards in paragraph (d) of this section. We will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator) for an element, to determine whether the State agency has met the applicable data quality standards. If the resultant error rate exceeds 10 percent, ACF will so notify the State.

(3) ACF will notify a State agency that fails to submit a data file that meets the standards in paragraph (c) or (d) of this section, within 30 days of the report deadline.

(4) In general, a State agency that has not met either the file standards or data quality standards must submit a corrected data file no later than when data is due for the subsequent six month reporting period (*i.e.*, by April 15 and October 15), as applicable. ACF will determine that the corrected data file is in compliance if it meets the file and data standards in paragraphs (c) and (d) of this section. Exception. If ACF

determines initially that the State agency's data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transactions dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the State agency does not submit a corrected data file, or submits a corrected data file that fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the State agency of such and apply penalties as indicated in § 1355.46 of this part.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the State agency is meeting all of the requirements of 45 CFR1355.41 through 1355.44 of this part.

§ 1355.46 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the State agency's claims for title IV–E foster care administration (including SACWIS) and training for the quarter in which the State agency is required to submit the out-of-home care data file. For out-of-home care data files due on April 15, ACF will assess the penalty based on the State agency's claims for the third quarter of the Federal fiscal year. For out-of-home care data files due on October 15, ACF will assess the penalty based on the State agency's claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent (⅙ of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the State agency's submitted corrected data file does not comply with 45 CFR 1355.45 of this part.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of one fourth of one percent (¼ of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the State agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the State agency's title IV–E foster care grant award in the amount of the penalty from the State agency's claims following the State agency notification of ACF's final determination of noncompliance.

(d) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.13.

(e) *Appeals.* The State agency may appeal to the HHS Departmental Appeals Board, pursuant to 45 CFR part 16, ACF's final determination of noncompliance.

4. Remove the appendices to 1355.

Appendix A to Part 1355 [Removed]

Appendix B to Part 1355 [Removed]

Appendix C to Part 1355 [Removed]

Appendix D to Part 1355 [Removed]

Appendix E to Part 1355 [Removed]

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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. 660/P.L. 110–177
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